77-1-1. Short title.

This act shall be known and may be cited as the "Utah Code of Criminal Procedure."

Enacted by Chapter 15, 1980 General Session

77-1-2. Criminal procedure prescribed.

The procedure in criminal cases shall be as prescribed in this title, the Rules of Criminal Procedure, and such further rules as may be adopted by the Supreme Court of Utah.

Enacted by Chapter 15, 1980 General Session

77-1-3. Definitions.

For the purpose of this act:

(1) "Criminal action" means the proceedings by which a person is charged, accused, and brought to trial for a public offense.

(2) "Indictment" means an accusation in writing presented by a grand jury to the district court charging a person with a public offense.

(3) "Information" means an accusation, in writing, charging a person with a public offense which is presented, signed, and filed in the office of the clerk where the prosecution is commenced pursuant to Section 77-2-1.1.

(4) "Magistrate" means a justice or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section 78A-5-107, except that the authority of a court commissioner to act as a magistrate shall be limited by rule of the judicial council. The judicial council rules shall not exceed constitutional limitations upon the delegation of judicial authority.

Amended by Chapter 3, 2008 General Session

77-1-4. Conviction to precede punishment.

No person shall be punished for a public offense until convicted in a court having jurisdiction.

Enacted by Chapter 15, 1980 General Session

77-1-5. Prosecuting party.

A criminal action for any violation of a state statute shall be prosecuted in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved.

Enacted by Chapter 15, 1980 General Session

77-1-6. Rights of defendant.

(1) In criminal prosecutions the defendant is entitled:

(a) To appear in person and defend in person or by counsel;

(b) To receive a copy of the accusation filed against him;
(c) To testify in his own behalf;
(d) To be confronted by the witnesses against him;
(e) To have compulsory process to insure the attendance of witnesses in his behalf;
(f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;
(g) To the right of appeal in all cases; and
(h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.
(2) In addition:
(a) No person shall be put twice in jeopardy for the same offense;
(b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;
(c) No person shall be compelled to give evidence against himself;
(d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and
(e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

Enacted by Chapter 15, 1980 General Session

77-1-7. Dismissal without trial -- Custody or discharge of defendant.

(1) (a) Further prosecution for an offense is not barred if the court dismisses an information or indictment based on the ground:
(i) there was unreasonable delay;
(ii) the court is without jurisdiction;
(iii) the offense was not properly alleged in the information or indictment; or
(iv) there was a defect in the impaneling or the proceedings relating to the grand jury.
(b) The court may make orders regarding custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise, the defendant shall be discharged and bail exonerated.
(2) An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or upon the statute of limitations is a bar to any other prosecution for the offense charged.

Enacted by Chapter 7, 1990 General Session

77-2-1. Authorization to file information.

Unless otherwise provided by law, no information may be filed charging the commission of any felony or class A misdemeanor unless authorized by a prosecuting attorney.

Enacted by Chapter 15, 1980 General Session

77-2-1.1. Signing and filing of information.

The prosecuting attorney shall sign all informations. The prosecuting attorney may:

(1) sign the information in the presence of a magistrate; or

(2) present and file the information in the office of the clerk where the prosecution is commenced upon the signature of the prosecuting attorney.

Enacted by Chapter 33, 1992 General Session

77-2-2. Definitions.

For the purpose of this chapter:

(1) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted;

(2) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program or make restitution to the victim or fulfill some other condition; and

(3) "Commencement of prosecution" means the filing of an information or an indictment.

Enacted by Chapter 15, 1980 General Session

77-2-3. Termination of investigative action.

Prior to the commencement of prosecution, the prosecutor may, without approval of a magistrate, authorize a termination of investigative action when it appears that further investigative action is not in the public interest.

Enacted by Chapter 15, 1980 General Session

77-2-4. Dismissal of prosecution.

After commencement of a prosecution the prosecutor may, upon reasonable grounds, move the magistrate before whom the prosecution is pending to dismiss the prosecution. If, in the judgment of the magistrate, the prosecution should not continue, he may dismiss the prosecution and enter an order of dismissal stating the reasons for the dismissal in the order.

Enacted by Chapter 15, 1980 General Session

77-2-4.2. Compromise of traffic charges -- Limitations.

(1) As used in this section:

(a) "Compromise" means referral of a person charged with a traffic violation to traffic school or other school, class, or remedial or rehabilitative program.

(b) "Traffic violation" means any charge for which bail may be forfeited in lieu of

appearance, by citation or information, of a violation of:

(i) Title 41, Chapter 6a, Traffic Code, amounting to:

(A) a class B misdemeanor;

(B) a class C misdemeanor; or

(C) an infraction; or

(ii) any local traffic ordinance.

(2) Any compromise of a traffic violation shall be done pursuant to a plea in abeyance agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:

(a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or

(b) when there is a plea by the defendant to and entry of a judgment by a court for the offense originally charged or for an amended charge.

(3) In all cases which are compromised pursuant to the provisions of Subsection (2):

(a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall:

(i) be subject to the same surcharge as if imposed on a criminal fine;

(ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and

(iii) be not more than $25 greater than the bail designated in the Uniform Bail Schedule; or

(b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the traffic school or other school, class, or rehabilitative program shall be collected, which surcharge shall:

(i) be computed, assessed, collected, and remitted in the same manner as if the traffic school fee and surcharge had been imposed as a criminal fine and surcharge; and

(ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.

(4) If a written plea in abeyance agreement is provided, or the defendant requests a written accounting, an itemized statement of all amounts assessed by the court shall be provided, including:

(a) the Uniform Bail Schedule amount;

(b) the amount of any surcharges being assessed; and

(c) the amount of the plea in abeyance fee.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 339, 2008 General Session
Amended by Chapter 382, 2008 General Session

77-2-4.3. Compromise of boating violations -- Limitations.

(1) As used in this section:

(a) "Compromise" means referral of a person charged with a boating violation to a boating safety course approved by the Division of Parks and Recreation.

(b) "Boating violation" means any charge for which bail may be forfeited in lieu of appearance, by citation or information, of a violation of Title 73, Chapter 18, State

Boating Act, amounting to:

(i) a class B misdemeanor;

(ii) a class C misdemeanor; or

(iii) an infraction.

(2) Any compromise of a boating violation shall be done pursuant to a plea in abeyance agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:

(a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or

(b) when there is a plea by the defendant to and entry of a judgment by a court for the offense originally charged or for an amended charge.

(3) In all cases which are compromised pursuant to the provisions of Subsection (2):

(a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall:

(i) be subject to the same surcharge as if imposed on a criminal fine;

(ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and

(iii) be not more than $25 greater than the bail designated in the Uniform Bail Schedule; or

(b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the boating safety course shall be collected, which surcharge shall:

(i) be computed, assessed, collected, and remitted in the same manner as if the boating safety course fee and surcharge had been imposed as a criminal fine and surcharge; and

(ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.

(4) If a written plea in abeyance agreement is provided, or the defendant requests a written accounting, an itemized statement of all amounts assessed by the court shall be provided, including:

(a) the Uniform Bail Schedule amount;

(b) the amount of any surcharges being assessed; and

(c) the amount of the plea in abeyance fee.

Enacted by Chapter 386, 2011 General Session

77-2-4.5. Dismissal by compromise -- Limitations.

(1) In misdemeanor cases the court may dismiss the case upon motion of the prosecutor if it is compromised by the defendant and the injured party, except under Subsection (2). The injured party shall first acknowledge the compromise before the court or in writing. The reasons for the order shall be set forth and entered in the minutes. The order is a bar to another prosecution for the same offense.

(2) A dismissal by compromise may not be granted when the misdemeanor is committed by or upon a peace officer while in the performance of his duties, or riotously, or with intent to commit a felony.

Enacted by Chapter 7, 1990 General Session

77-2-5. Diversion agreement -- Negotiation -- Contents.

(1) At any time after the filing of an information or indictment and prior to conviction, the prosecuting attorney may, by written agreement with the defendant, filed with the court, and upon approval of the court, divert a defendant to a non-criminal diversion program.

(2) A defendant shall be represented by counsel during negotiations for diversion and at the time of execution of any diversion agreement unless he shall have knowingly and intelligently waived his right to counsel.

(3) The defendant has the right to be represented by counsel at any court hearing relating to a diversion program.

(4) Any diversion agreement entered into between the prosecution and the defense and approved by a magistrate shall contain a full, detailed statement of the requirements agreed to by the defendant and the reasons for diversion. A decision by a prosecuting attorney not to divert a defendant is not subject to judicial review.

(5) Diversion programs longer than two years shall not be permitted.

(6) A diversion agreement shall not be approved unless the defendant, before a magistrate and in the agreement, knowingly and intelligently waives his constitutional right to a speedy trial.

Enacted by Chapter 15, 1980 General Session

77-2-6. Dismissal after compliance with diversion agreement.

The court shall dismiss the information or indictment filed against the defendant who has complied with the requirements of his diversion agreement and the defendant shall not thereafter be subject to further prosecution for the offense involved or for any lesser included offense.

Enacted by Chapter 15, 1980 General Session

77-2-7. Diversion not a conviction.

Diversion is not a conviction and if the case is dismissed the matter shall be treated as if the charge had never been filed.

Enacted by Chapter 15, 1980 General Session

77-2-8. Violation of diversion agreement -- Hearing -- Prosecution resumed.

If, during the course of the diversion of a defendant, information is brought to the attention of a magistrate or the prosecuting attorney that the defendant has violated his diversion agreement and it appears in the best interests of the community to reinstate and proceed with the prosecution, the prosecuting attorney, upon court approval, or the magistrate, on his own motion, shall cause to be served upon the defendant an order to show cause specifying the facts relied upon by the prosecuting attorney or magistrate to terminate diversion and shall set a time and place for a hearing to determine whether or not the defendant has violated his diversion agreement. If, at the hearing, the magistrate finds the defendant has failed to comply with any terms or conditions of the

diversion agreement, he may authorize the prosecuting attorney to proceed with prosecution. The prosecution of a diverted offense shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of the diversion agreement by which the original prosecution was diverted.

Enacted by Chapter 15, 1980 General Session

77-2-9. Offenses ineligible for diversion.

(1) Except as provided in Subsection (2), diversion may not be granted by a magistrate for:

(a) a capital felony;

(b) a felony in the first degree;

(c) any case involving a sexual offense against a victim who is under the age of 14;

(d) any motor vehicle related offense involving alcohol or drugs;

(e) any case involving using a motor vehicle in the commission of a felony;

(f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended license;

(g) any case involving operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of:

(i) manslaughter under Section 76-5-205; or

(ii) negligent homicide under Section 76-5-206; or

(h) a crime of domestic violence as defined in Section 77-36-1.

(2) When a person under the age of 16 is alleged to have committed any violation of Title 76, Chapter 5, Part 4, Sexual Offenses, the court may enter a diversion in the matter if the court enters on the record its findings that:

(a) the person did not use coercion or force;

(b) there is no more than two years' difference between the ages of the participants; and

(c) it would be in the best interest of the person to grant diversion.

Amended by Chapter 146, 2009 General Session

77-2a-1. Definitions.

For the purposes of this chapter:

(1) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(2) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

Enacted by Chapter 82, 1993 General Session

77-2a-2. Plea in abeyance agreement -- Negotiation -- Contents -- Terms of agreement -- Waiver of time for sentencing.

(1) At any time after acceptance of a plea of guilty or no contest but prior to entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.

(2) The defendant shall be represented by counsel during negotiations for a plea in abeyance and at the time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant shall have knowingly and intelligently waived his right to counsel.

(3) The defendant has the right to be represented by counsel at any court hearing relating to a plea in abeyance agreement.

(4) (a) Any plea in abeyance agreement entered into between the prosecution and the defendant and approved by the court shall include a full, detailed recitation of the requirements and conditions agreed to by the defendant and the reason for requesting the court to hold the plea in abeyance.

(b) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be in writing and shall, prior to acceptance by the court, be executed by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the court.

(5) A plea shall not be held in abeyance for a period longer than 18 months if the plea was to any class of misdemeanor or longer than three years if the plea was to any degree of felony or to any combination of misdemeanors and felonies.

(6) A plea in abeyance agreement shall not be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as designated in Rule 22(a), Utah Rules of Criminal Procedure.

Enacted by Chapter 82, 1993 General Session

77-2a-3. Manner of entry of plea -- Powers of court.

(1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

(b) In cases charging offenses for which bail may be forfeited, a plea in abeyance agreement may be entered into without a personal appearance before a magistrate.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or

(b) allow withdrawal of defendant's plea and order the dismissal of the case.

(3) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as provided in the plea in abeyance agreement or as agreed to by all

parties. Upon sentencing a defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of the offense.

(4) The court may require the Department of Corrections to assist in the administration of the plea in abeyance agreement as if the defendant were on probation to the court under Section 77-18-1.

(5) The terms of a plea in abeyance agreement may include:

(a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and which may not exceed in amount the maximum fine and surcharge which could have been imposed upon conviction and sentencing for the same offense;

(b) an order that the defendant pay restitution to the victims of the defendant's actions as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;

(c) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and

(d) an order that the defendant comply with any other conditions which could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(6) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

(7) No plea may be held in abeyance in any case involving a sexual offense against a victim who is under the age of 14.

(8) Beginning on July 1, 2008, no plea may be held in abeyance in any case involving a driving under the influence violation under Section 41-6a-502.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 339, 2008 General Session
Amended by Chapter 382, 2008 General Session

77-2a-4. Violation of plea in abeyance agreement -- Hearing -- Entry of judgment and imposition of sentence -- Subsequent prosecutions.

(1) If, at any time during the term of the plea in abeyance agreement, information comes to the attention of the prosecuting attorney or the court that the defendant has violated any condition of the agreement, the court, at the request of the prosecuting attorney, made by appropriate motion and affidavit, or upon its own motion, may issue an order requiring the defendant to appear before the court at a designated time and place to show cause why the court should not find the terms of the agreement to have been violated and why the agreement should not be terminated. If, following an evidentiary hearing, the court finds that the defendant has failed to substantially comply with any term or condition of the plea in abeyance agreement, it may terminate the agreement and enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered. Upon entry of

judgment of conviction and imposition of sentence, any amounts paid by the defendant as a plea in abeyance fee prior to termination of the agreement shall be credited against any fine imposed by the court.

(2) The termination of a plea in abeyance agreement and subsequent entry of judgment of conviction and imposition of sentence shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of an agreement whereby the original plea was placed in abeyance.

Enacted by Chapter 82, 1993 General Session

77-3-1. Threatened offense -- Complaint.

A complaint that a person has threatened to commit an offense against the person or property of another, except in the case of stalking, may be made before any magistrate. Petitions alleging the commission of stalking shall be handled pursuant to Title 77, Chapter 3a, Stalking Injunctions.

Amended by Chapter 276, 2001 General Session

77-3-2. Examination of complainant and witnesses.

The magistrate shall examine, on oath, the complainant and any witnesses he may produce and may take their testimony in writing.

Enacted by Chapter 15, 1980 General Session

77-3-3. "Complaint" defined.

A complaint, within the meaning of this chapter, is a statement in writing setting forth the jurisdictional facts, specifying the threatened offense, and subscribed and sworn to by the complainant before the magistrate.

Enacted by Chapter 15, 1980 General Session

77-3-4. Warrant of arrest -- Temporary restraining order.

If the magistrate believes there is reasonable ground to fear the commission of the offense threatened, he may:

(1) Issue a warrant directed generally to any peace officer, reciting the substance of the complaint and commanding the officer to immediately arrest the person complained of and bring him before the magistrate or in the case of his absence or inability to act before the nearest and most accessible magistrate of the county; and

(2) Issue a temporary restraining order against the commission of the offense and order the person complained of to immediately appear before the magistrate for a hearing.

Enacted by Chapter 15, 1980 General Session

77-3-5. Defendant taken before different magistrate -- Procedure.

When the person arrested is taken before a magistrate other than the one who

issued the warrant, the peace officer who executed the warrant shall deliver it to the issuing magistrate with his endorsed return. The complaint and written testimony, if any, on which the warrant was issued shall be sent to the magistrate before whom the person arrested is taken.

Enacted by Chapter 15, 1980 General Session

77-3-6. Change of venue.

When the person complained of is brought before the magistrate, a change of venue may be had for good cause shown.

Enacted by Chapter 15, 1980 General Session

77-3-7. Hearing -- Evidence -- Record.

At the time set for hearing, the magistrate shall take evidence. The hearing may be recorded or reduced to writing.

Enacted by Chapter 15, 1980 General Session

77-3-8. Findings and orders -- Discharge -- Undertaking -- Commitment.

(1) If it appears there is no reasonable ground to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged. The complainant may be ordered to pay the costs of the proceedings if the magistrate believes the complaint was unfounded and frivolous.

(2) If there is reasonable ground to fear the commission of an offense, the court may, in addition or as an alternative to other relief, enter an order permanently restraining the person from engaging in illegal conduct or acting in any manner that could result in illegal conduct or the person complained of may be required to enter into an undertaking in a sum not to exceed $3,000, with one or more sufficient sureties, to keep the peace toward the people of this state and particularly toward the persons endangered. The conditions of the undertaking shall be in writing and shall be for a period of six months. It may be extended on good cause shown for a longer period or enlarged and a new undertaking may be required.

(a) If the undertaking is given, the party complained of shall be discharged.

(b) If the undertaking is not given, the magistrate shall commit the defendant to jail specifying in the warrant of commitment the requirement to give security, the amount thereof, and the effective period of time.

(c) A person committed for not giving the required undertaking may be discharged by any magistrate when he provides the undertaking.

Enacted by Chapter 15, 1980 General Session

77-3-9. Filing undertaking with district court clerk.

An undertaking shall be filed in the office of the clerk of the district court.

Amended by Chapter 68, 1995 General Session

77-3-10. Assault in presence of magistrate or court.

A person who, in the presence of the court or magistrate, assaults or threatens to assault another or to commit an offense against person or property, or who contends with another with threatening words, may be ordered by the court or magistrate to give security and if he refuses to do so, may be committed as provided in Subsection 77-3-8(2)(b).

Enacted by Chapter 15, 1980 General Session

77-3-11. Undertaking, when broken -- Prosecution.

(1) The undertaking is broken if the person posting the bond violates the conditions set by the court.

(2) If the undertaking is broken and the county attorney produces evidence of the violation to the district court where the undertaking was filed, the court shall order an action on the undertaking to be commenced, and the county attorney shall commence an action in the name of the state against the principal sureties on the undertaking.

Enacted by Chapter 15, 1980 General Session

77-3-12. Record of conviction conclusive evidence -- Judgment on undertaking.

In an action filed by the county attorney to recover on an undertaking:

(1) The offense shall be alleged as a breach of the undertaking stated in a record of conviction and a record of conviction is conclusive evidence thereof.

(2) If the court finds the offense constitutes a breach of the undertaking, judgment for the amount of the undertaking shall be entered against the parties liable.

Enacted by Chapter 15, 1980 General Session

77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.

(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.

(2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(3) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The office shall provide the forms to the clerk of each district court.

(a) All petitions, injunctions, ex parte injunctions, and any other necessary forms

shall be issued in the form adopted by the Administrative Office of the Courts.

(b) The offices of the court clerk shall provide the forms to persons seeking to proceed under this chapter.

(4) The petition for a civil stalking injunction shall include:

(a) the name of the petitioner; however, the petitioner's address shall be disclosed to the court for purposes of service, but, on request of the petitioner, the address may not be listed on the petition, and shall be protected and maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific events and dates of the actions constituting the alleged stalking;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of stalking, which may be in the form of a police report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation of stalking.

(5) (a) If the court determines that there is reason to believe that an offense of stalking has occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the following:

(i) respondent may be enjoined from committing stalking;

(ii) respondent may be restrained from coming near the residence, place of employment, or school of the other party or specifically designated locations or persons;

(iii) respondent may be restrained from contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party; or

(iv) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(b) If the petitioner and respondent have minor children, the court shall follow the provisions of Section 78B-7-106 and take into consideration the respondent's custody and parent-time rights while ensuring the safety of the victim and the minor children. If the court issues a civil stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered.

(6) Within 10 days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

(a) A hearing requested by the respondent shall be held within 10 days from the date the request is filed with the court unless the court finds compelling reasons to continue the hearing. The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(b) An ex parte civil stalking injunction issued under this section shall state on its face:

(i) that the respondent is entitled to a hearing, upon written request within 10 days of the service of the order;

(ii) the name and address of the district court where the request may be filed;

(iii) that if the respondent fails to request a hearing within 10 days of service, the ex parte civil stalking injunction is automatically modified to a civil stalking injunction without further notice to the respondent and that the civil stalking injunction expires three years after service of the ex parte civil stalking injunction; and

(iv) that if the respondent requests, in writing, a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested.

(7) At the hearing, the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(8) The ex parte civil stalking injunction and civil stalking injunction shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order."

(9) The ex parte civil stalking injunction shall be served on the respondent within 90 days from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no hearing is requested in writing by the respondent within 10 days of service of the ex parte civil stalking injunction, the ex parte civil stalking injunction automatically becomes a civil stalking injunction without further notice to the respondent and expires three years from the date of service of the ex parte civil stalking injunction.

(10) If the respondent requests a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested. At the hearing, the burden is on the respondent to show good cause why the civil stalking injunction should be dissolved or modified.

(11) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil stalking injunction on the respondent.

(b) Any changes or modifications of the ex parte civil stalking injunction are effective upon service on the respondent. The original ex parte civil stalking injunction continues in effect until service of the changed or modified civil stalking injunction on the respondent.

(12) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or modified civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at any time upon application of the petitioner to the court which granted it.

(14) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent. Charges may be imposed by the clerk's office for any additional copies, certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

(15) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The district court shall hear and decide all matters arising pursuant to this section.

(16) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees.

(17) This chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation.

Amended by Chapter 383, 2012 General Session

77-3a-102. Fees -- Service of process.

(1) Ex parte civil stalking injunctions and civil stalking injunctions shall be served by a sheriff or constable.

(2) All service shall be in accordance with applicable law.

(3) Fees may not be imposed by a court clerk, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining an ex parte civil stalking injunction; or

(c) service of a civil stalking injunction, ex parte or otherwise.

Enacted by Chapter 276, 2001 General Session

77-3a-103. Enforcement.

(1) A peace or law enforcement officer shall, without a warrant, arrest a person if the peace or law enforcement officer has probable cause to believe that the person has violated an ex parte civil stalking injunction or civil stalking injunction issued pursuant to this chapter or has violated a permanent criminal stalking injunction issued pursuant to Section 76-5-106.5, whether or not the violation occurred in the presence of the officer.

(2) A violation of an ex parte civil stalking injunction or of a civil stalking injunction issued pursuant to this chapter constitutes the criminal offense of stalking as defined in Section 76-5-106.5 and is also a violation of the civil stalking injunction. Violations may be enforced by a civil action initiated by the petitioner, a criminal action initiated by a prosecuting attorney, or both.

Enacted by Chapter 276, 2001 General Session

77-4-1. Force by officer -- Arrest.

A public officer authorized to execute process issued by any court may use such

force as is reasonable and necessary to execute service of process. If necessary, he may seize, arrest, and confine persons resisting or aiding and abetting resistance to his service of process.

Enacted by Chapter 15, 1980 General Session

77-5-1. Officers liable to impeachment.

The governor and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors or malfeasance in office.

Enacted by Chapter 15, 1980 General Session

77-5-2. Chief justice to preside, when.

When the governor is on trial, the chief justice of the Supreme Court shall preside, and, in case he is disqualified or unable to act, the Senate shall select some other justice of the Supreme Court to preside.

Enacted by Chapter 15, 1980 General Session

77-5-3. Two-thirds vote of House required.

The House of Representatives shall have the sole power of impeachment, but in order to impeach, two-thirds of all the members elected shall vote therefor. Impeachments shall be by resolution. The resolution shall originate in and be adopted by the House of Representatives.

Enacted by Chapter 15, 1980 General Session

77-5-4. Trial by Senate.

All impeachments shall be tried by the Senate sitting for that purpose.

Enacted by Chapter 15, 1980 General Session

77-5-5. Hearing, notice of -- Defendant served with articles.

The Senate shall assign a day for the hearing of the impeachment and inform the House of Representatives. The president of the Senate shall cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the officer being impeached not less than 10 days before the day fixed for the hearing.

Enacted by Chapter 15, 1980 General Session

77-5-6. Suspension on filing articles -- Vacancy, how filled.

When articles of impeachment are presented to the Senate, and the officer has been served with a copy of the articles, he shall be temporarily suspended from his office and may not exercise his duties until he is acquitted. Upon the suspension of any

officer, other than the governor, or a justice or judge of a court of record, his office shall be temporarily filled by an appointment made by the governor, with the consent of the Senate, until the acquittal of the party impeached, or, in the case of his removal, until the vacancy is filled at the next election as provided by law.

Amended by Chapter 47, 1986 General Session

77-5-7. Senators to be sworn -- Two-thirds required for proceedings.

At the time and place appointed, and before the Senate proceeds to act on the impeachment, the secretary shall administer to the president of the Senate, and the president of the Senate shall administer to each of the members of the Senate then present, an oath or affirmation to do justice according to law and the evidence and no member of the Senate shall act or vote on the impeachment, or any question arising on it without taking the oath or affirmation and being present during the proceedings. No proceedings shall be conducted unless at least two-thirds of the senators elected and entitled to vote are present.

Enacted by Chapter 15, 1980 General Session

77-5-8. Two-thirds vote necessary for conviction.

The officer shall not be convicted on impeachment without the concurrence of two-thirds of the senators elected, voting by ayes and nays, and if two-thirds of the senators elected do not concur in a conviction, he shall be acquitted.

Enacted by Chapter 15, 1980 General Session

77-5-9. Nature of judgment.

The judgment may be that the officer be suspended, or removed from office and disqualified to hold any office of honor, trust, or profit in the state.

Enacted by Chapter 15, 1980 General Session

77-5-10. Effect of judgment.

If judgment of suspension is given, the officer, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

Enacted by Chapter 15, 1980 General Session

77-5-11. Impeachment not a bar to prosecution.

The officer, whether convicted or acquitted, shall nevertheless be liable to prosecution, trial, and punishment according to law for any offense committed that constituted a basis for the impeachment proceedings.

Enacted by Chapter 15, 1980 General Session

77-5-12. Rules of procedure.

The procedure for impeachment proceedings shall be adopted by rule in each house and such rules shall govern.

Enacted by Chapter 15, 1980 General Session

77-6-1. Officers subject to removal.

All justices of the peace and all officers of any city, county or other political subdivision of this state not liable to impeachment shall be subject to removal as provided in this chapter for high crimes and misdemeanors or malfeasance in office.

Enacted by Chapter 15, 1980 General Session

77-6-2. Commencement of action for removal.

An action for the removal of a justice court judge or officer of a city, county, or other political subdivision of this state shall be commenced by presenting a sworn, written accusation to the district court. The accusation may be initiated by any taxpayer, grand jury, county attorney, or district attorney for the county in which the officer was elected or appointed, or by the attorney general.

Amended by Chapter 38, 1993 General Session

77-6-3. Form of accusation.

The accusation shall state the grounds for removal in ordinary and concise language.

Enacted by Chapter 15, 1980 General Session

77-6-4. Presentation of accusation -- Service on defendant.

(1) When the accusation is initiated by:

(a) a grand jury, the foreperson shall present the accusation to the court in the presence of the grand jurors which shall be filed with the clerk; or

(b) a taxpayer, the county attorney, district attorney, or the attorney general, any of these persons shall present the accusation to the presiding judge of the district court for filing with the clerk.

(2) (a) Except when the accusation is initiated by the county attorney or district attorney, the court shall furnish a copy of the accusation to the county attorney or, if within a prosecution district, the district attorney who shall investigate and may prosecute the accusation.

(b) If the accusation is against the county or district attorney, the court shall furnish a copy of the accusation to the Office of the Attorney General, who shall investigate and may prosecute the accusation.

(c) If prosecution is pursued, the county attorney, district attorney, or attorney general shall serve a copy of the accusation on the defendant with a summons which requires the defendant to appear before the district court of the county in which the county attorney or district attorney serves and to answer the accusation.

(3) The time fixed for appearance may not be less than 10 days from the date of

service of summons. The service of the accusation, summons, and the return of service shall be made in the manner provided by law for service of civil process.

Amended by Chapter 67, 1996 General Session

77-6-5. Appearance -- Procedure on default.

The defendant shall appear at the time appointed and answer the accusation, unless for some sufficient cause the court assigns another time for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

Enacted by Chapter 15, 1980 General Session

77-6-6. Answer -- Objections for insufficiency.

The defendant may orally answer the accusation either by admitting or denying it in open court, or he may, in writing, object to the legal sufficiency of the accusation. If the objection to the sufficiency of the accusation is sustained, the accusation shall be dismissed. If the objection is overruled, the defendant shall immediately admit or deny the accusation.

Enacted by Chapter 15, 1980 General Session

77-6-7. Trial on denial or refusal to answer -- Procedure.

If the defendant denies the accusation or refuses to answer or appear, the court shall proceed to try the accusation. The rights of the parties and procedures used shall be the same as in any civil proceeding.

Enacted by Chapter 15, 1980 General Session

77-6-8. Judgment of removal -- Service on defendant.

If the defendant admits the accusation or is convicted, the court shall enter judgment against him directing the defendant be removed from office and setting forth the causes of removal. The judgment of removal shall immediately be served upon the defendant.

Enacted by Chapter 15, 1980 General Session

77-6-9. Appeal -- Suspension from office.

From a judgment of removal an appeal may be taken to the Supreme Court in the same manner as from a judgment in a civil action; but from entry of judgment and until the judgment is reversed, the defendant shall be suspended from his office. Pending the appeal, the office shall be filled as in the case of a vacancy.

Enacted by Chapter 15, 1980 General Session

77-7-1. "Arrest" defined -- Restraint allowed.

An arrest is an actual restraint of the person arrested or submission to custody. The person shall not be subjected to any more restraint than is necessary for his arrest and detention.

Enacted by Chapter 15, 1980 General Session

77-7-2. Arrest by peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1) (a) for any public offense committed or attempted in the presence of any peace officer; and

(b) as used in this Subsection (1), "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when the peace officer has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when the peace officer has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

(a) flee or conceal himself to avoid arrest;

(b) destroy or conceal evidence of the commission of the offense; or

(c) injure another person or damage property belonging to another person;

(4) when the peace officer has reasonable cause to believe the person has committed the offense of failure to disclose identity under Section 76-8-301.5; or

(5) when the peace officer has reasonable cause to believe that the person is an alien:

(a) subject to a civil removal order issued by an immigration judge;

(b) regarding whom a civil detainer warrant has been issued by the federal Department of Homeland Security; or

(c) who has been charged or convicted in another state with one or more aggravated felonies as defined by 8 U.S.C. Sec. 1101(a)(43).

Amended by Chapter 18, 2011 General Session
Amended by Chapter 21, 2011 General Session

77-7-3. By private persons.

A private person may arrest another:

(1) For a public offense committed or attempted in his presence; or

(2) When a felony has been committed and he has reasonable cause to believe the person arrested has committed it.

Enacted by Chapter 15, 1980 General Session

77-7-4. Magistrate may orally order arrest.

A magistrate may orally require a peace officer to arrest anyone committing or

attempting to commit a public offense in the presence of the magistrate, and, in the case of an emergency, when probable cause exists, a magistrate may orally authorize a peace officer to arrest a person for a public offense, and thereafter, as soon as practical, an information shall be filed against the person arrested.

Enacted by Chapter 15, 1980 General Session

77-7-5. Issuance of warrant -- Time and place arrests may be made -- Contents of warrant -- Responsibility for transporting prisoners -- Court clerk to dispense restitution for transportation.

(1) A magistrate may issue a warrant for arrest upon finding probable cause to believe that the person to be arrested has committed a public offense. If the offense charged is:

(a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

(b) a misdemeanor, the arrest upon a warrant can be made at night only if:

(i) the magistrate has endorsed authorization to do so on the warrant;

(ii) the person to be arrested is upon a public highway, in a public place, or in a place open to or accessible to the public; or

(iii) the person to be arrested is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest.

(2) For the purpose of Subsection (1):

(a) daytime hours are the hours of 6 a.m. to 10 p.m.; and

(b) nighttime hours are the hours after 10 p.m. and before 6 a.m.

(3) (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(b) (i) The law enforcement agency identified by the magistrate under Subsection (3)(a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.

(ii) The law enforcement agency named on the warrant may contract with another law enforcement agency to have a defendant transported.

(c) (i) The law enforcement agency identified by the magistrate under Subsection (3)(a) as responsible for transporting the defendant shall provide to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.

(ii) The court clerk shall account for restitution paid under Subsection 76-3-201(5) for governmental transportation expenses and dispense restitution money collected by the court to the law enforcement agency responsible for the transportation of a convicted defendant.

Amended by Chapter 324, 2010 General Session

77-7-6. Manner of making arrest.

(1) The person making the arrest shall inform the person being arrested of his intention, cause, and authority to arrest him. Such notice shall not be required when:

(a) there is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(b) the person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(c) the person being arrested is pursued immediately after the commission of an offense or an escape.

(2) (a) If a hearing-impaired person, as defined in Subsection 78B-1-201(2), is arrested for an alleged violation of a criminal law, including a local ordinance, the arresting officer shall assess the communicative abilities of the hearing-impaired person and conduct this notification, and any further notifications of rights, warnings, interrogations, or taking of statements, in a manner that accurately and effectively communicates with the hearing-impaired person including qualified interpreters, lip reading, pen and paper, typewriters, computers with print-out capability, and telecommunications devices for the deaf.

(b) Compliance with this subsection is a factor to be considered by any court when evaluating whether statements of a hearing-impaired person were made knowingly, voluntarily, and intelligently.

Amended by Chapter 3, 2008 General Session

77-7-7. Force in making arrest.

If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest. Deadly force may be used only as provided in Section 76-2-404.

Enacted by Chapter 15, 1980 General Session

77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a warrant.

(1) (a) Subject to Subsection (2), a peace officer when making an arrest may forcibly enter the building in which the person to be arrested is, or in which there is probable cause for believing him to be.

(b) Before making the forcible entry, the officer shall:

(i) identify himself or herself as a law enforcement officer; and

(ii) demand admission and explain the purpose for which admission is desired.

(c) (i) The officer need not give a demand and explanation, or identify himself or herself, before making a forcible entry under the exceptions in Section 77-7-6 or where there is probable cause to believe evidence will be easily or quickly secreted or destroyed.

(ii) The officer shall identify himself or herself and state the purpose of entering the premises as soon as practicable after entering the premises.

(d) The officer may use only that force which is reasonable and necessary to effectuate forcible entry under this section.

(2) If the building to be entered under Subsection (1) appears to be a private

residence or the officer knows the building is a private residence, and if there is no consent to enter or there are no exigent circumstances, the officer shall, before entering the building:

(a) obtain an arrest or search warrant if the building is the residence of the person to be arrested; or

(b) obtain a search warrant if the building is a residence, but not the residence of the person whose arrest is sought.

Amended by Chapter 297, 2014 General Session

77-7-8.5. Use of tactical groups -- Reporting requirements.

(1) As used in this section:

(a) (i) "Reportable incident" means:

(A) the deployment of a tactical group; or

(B) law enforcement officers who serve a search warrant after using forcible entry.

(ii) "Reportable incident" does not mean a forced cell entry at a corrections facility.

(b) "Tactical group" means a special unit, within a law enforcement agency, specifically trained and equipped to respond to critical, high-risk situations.

(2) On and after January 1, 2015, every state, county, municipal, or other law enforcement agency shall annually on or before April 30 report to the Commission on Criminal and Juvenile Justice the following information for the previous calendar year:

(a) whether the law enforcement agency conducted one or more reportable incidents;

(b) the following information regarding each reportable incident:

(i) the organizational title of the agency, task force, or tactical group deployed;

(ii) the city, county, and zip code of the location where the reportable incident occurred;

(iii) the reason for the deployment;

(iv) the type of warrant obtained, if any;

(v) if a threat assessment was completed;

(vi) if a warrant was obtained, the name of the judge or magistrate who authorized the warrant;

(vii) the number of arrests made, if any;

(viii) if any evidence was seized;

(ix) if any property was seized, other than property that was seized as evidence;

(x) if a forcible entry was made;

(xi) if a firearm was discharged by a law enforcement officer, and, if so, approximately how many shots were fired by each officer;

(xii) if a weapon was brandished by a person other than the law enforcement officers;

(xiii) if a weapon was used by a person against the law enforcement officers and, if a firearm was used, the number or approximate number of shots fired by the person;

(xiv) the identity of any law enforcement agencies that participated or provided

resources for the deployment;

(xv) if a person or domestic animal was injured or killed by a law enforcement officer; and

(xvi) if a law enforcement officer was injured or killed; and

(c) the number of arrest warrants served that required a forced entry as provided by Section 77-7-8 and were not served in conjunction with a search warrant that resulted in a reportable incident.

(3) If a warrant is served by a multijurisdictional team of law enforcement officers, the reporting requirement in this section shall be the responsibility of the commanding agency or governing authority of the multijurisdictional team.

(4) The Commission on Criminal and Juvenile Justice shall develop a standardized format that each law enforcement agency shall use in reporting the data required in Subsection (2).

(5) A law enforcement agency shall:

(a) compile the data described in Subsection (2) for each year as a report in the format required under Subsection (4); and

(b) submit the report to:

(i) the Commission on Criminal and Juvenile Justice; and

(ii) the local governing body of the jurisdiction served by the law enforcement agency.

(6) (a) The Commission on Criminal and Juvenile Justice shall summarize the yearly reports of law enforcement agencies submitted under Subsection (2).

(b) Before August 1 of each year, the Commission on Criminal and Juvenile Justice shall submit a report of the summaries described in Subsection (6)(a) to:

(i) the attorney general;

(ii) the speaker of the House of Representatives, for referral to any house standing or interim committees with oversight of law enforcement and criminal justice;

(iii) the president of the Senate, for referral to any senate standing or interim committees with oversight of law enforcement and criminal justice; and

(iv) each law enforcement agency.

(c) The report described in Subsection (6)(b) shall be published on the Utah Open Government website, open.utah.gov, before August 15 of each year.

(7) (a) If a law enforcement agency fails to comply with the reporting requirements listed in Subsection (2), the Commission on Criminal and Juvenile Justice shall contact the law enforcement agency and request that the agency comply with the required reporting provisions.

(b) If a law enforcement agency fails to comply with the reporting requirements listed in Subsection (2) within 30 days after being contacted by the Commission on Criminal and Juvenile Justice with a request to comply, the Commission on Criminal and Juvenile Justice shall report the noncompliance to the attorney general, the speaker of the House of Representatives, and the president of the Senate.

Enacted by Chapter 106, 2014 General Session

77-7-9. Weapons may be taken from prisoner.

Any person making an arrest may seize from the person arrested all weapons

which he may have on or about his person.

Enacted by Chapter 15, 1980 General Session

77-7-10. Telegraph or telephone authorization of execution of arrest warrant.

Any magistrate may, by an endorsement on a warrant of arrest, authorize by telegraph, telephone or other reasonable means, its execution. A copy of the warrant or notice of its issuance and terms may be sent to one or more peace officers. The copy or notice communicated authorizes the officer to proceed in the same manner under it as if he had an original warrant.

Enacted by Chapter 15, 1980 General Session

77-7-11. Possession of warrant by arresting officer not required.

Any peace officer who has knowledge of an outstanding warrant of arrest may arrest a person he reasonably believes to be the person described in the warrant, without the peace officer having physical possession of the warrant.

Enacted by Chapter 15, 1980 General Session

77-7-12. Detaining persons suspected of shoplifting or library theft -- Persons authorized.

(1) A peace officer, merchant, or merchant's employee, servant, or agent who has reasonable grounds to believe that goods held or displayed for sale by the merchant have been taken by a person with intent to steal may, for the purpose of investigating the unlawful act and attempting to effect a recovery of the goods, detain the person in a reasonable manner for a reasonable length of time.

(2) A peace officer or employee of a library may detain a person for the purposes and under the limits of Subsection (1) if there are reasonable grounds to believe the person violated Title 76, Chapter 6, Part 8, Library Theft.

Amended by Chapter 245, 1987 General Session

77-7-13. Arrest without warrant by peace officer -- Reasonable grounds, what constitutes -- Exemption from civil or criminal liability.

(1) A peace officer may arrest, without warrant, any person the officer has reasonable ground to believe has committed a theft under Title 76, Chapter 6, Part 8, Library Theft, or of goods held or displayed for sale.

(2) A charge of theft made to a peace officer under Part 8, Library Theft, by an employee of a library, or by a merchant, merchant's employee, servant, or agent constitutes a reasonable ground for arrest, and the peace officer is relieved from any civil or criminal liability.

Amended by Chapter 282, 1998 General Session

77-7-14. Person causing detention or arrest of person suspected of shoplifting or library theft -- Civil and criminal immunity.

(1) A peace officer, merchant, or merchant's employee, servant, or agent who causes the detention of a person as provided in Section 77-7-12, or who causes the arrest of a person for theft of goods held or displayed for sale, is not criminally or civilly liable where he has reasonable and probable cause to believe the person detained or arrested committed a theft of goods held or displayed for sale.

(2) A peace officer or employee of a library who causes a detention or arrest of a person under Title 76, Chapter 6, Part 8, Library Theft, is not criminally or civilly liable where he has reasonable and probable cause to believe that the person committed a theft of library materials.

Amended by Chapter 245, 1987 General Session

77-7-15. Authority of peace officer to stop and question suspect -- Grounds.

A peace officer may stop any person in a public place when he has a reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

Enacted by Chapter 15, 1980 General Session

77-7-16. Authority of peace officer to frisk suspect for dangerous weapon -- Grounds.

A peace officer who has stopped a person temporarily for questioning may frisk the person for a dangerous weapon if he reasonably believes he or any other person is in danger.

Enacted by Chapter 15, 1980 General Session

77-7-17. Authority of peace officer to take possession of weapons.

A peace officer who finds a dangerous weapon pursuant to a frisk may take and keep it until the completion of the questioning, at which time he shall either return it if lawfully possessed, or arrest such person.

Enacted by Chapter 15, 1980 General Session

77-7-18. Citation on misdemeanor or infraction charge.

Any person subject to arrest or prosecution on a misdemeanor or infraction charge may be issued and delivered a citation that requires the person to appear at the court of the magistrate with territorial jurisdiction. The citation may be issued by:

(1) a peace officer, in lieu of or in addition to taking the person into custody;

(2) any public official of any county or municipality charged with the enforcement of the law;

(3) a port-of-entry agent as defined in Section 72-1-102;

(4) an animal control officer of a special service district under Title 17D, Chapter 1, Special Service District Act, who is authorized to provide animal control service; and

(5) a volunteer authorized to issue a citation under Section 41-6a-213.

Amended by Chapter 322, 2012 General Session

77-7-19. Appearance required by citation -- Arrest for failure to appear -- Transfer of cases -- Motor vehicle violations -- Disposition of fines and costs.

(1) A person receiving a citation issued pursuant to Section 77-7-18 shall appear before the magistrate designated in the citation on or before the time and date specified in the citation unless the uniform bail schedule adopted by the Judicial Council or Subsection 77-7-21(1) permits forfeiture of bail for the offense charged.

(2) A citation may not require a person to appear sooner than five days or later than 14 days following its issuance.

(3) (a) A person who receives a citation and who fails to comply with Section 77-7-21 on or before the time and date and at the court specified is subject to arrest.

(b) The magistrate may issue a warrant of arrest based upon a citation that was served and filed in accordance with Section 77-7-20.

(4) Except where otherwise provided by law, a citation or information issued for violations of Title 41, Motor Vehicles, shall state that the person receiving the citation or information shall appear before the magistrate who has jurisdiction over the offense charged.

(5) Any justice court judge may, upon the motion of either the defense attorney or prosecuting attorney, based on a lack of territorial jurisdiction or the disqualification of the judge, transfer cases to a justice court with territorial jurisdiction or the district court within the county.

(6) (a) Clerks and other administrative personnel serving the courts shall ensure that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction and venue and shall refuse to receive citations that should be filed in another court.

(b) Fines, fees, costs, and forfeitures imposed or collected for violations of Title 41, Motor Vehicles, which are filed contrary to this section shall be paid to the entitled municipality or county by the state, county, or municipal treasurer who has received the fines, fees, costs, or forfeitures from the court which collected them.

(c) The accounting and remitting of sums due shall be at the close of the fiscal year of the municipality or county which has received fines, fees, costs, or forfeitures as a result of any improperly filed citations.

Amended by Chapter 292, 2009 General Session

77-7-20. Service of citation on defendant -- Filing in court -- Electronic filing -- Contents of citations.

(1) A peace officer or public official who issues a citation pursuant to Section 77-7-18 shall give the citation to the person cited and shall within five business days electronically file the data from Subsections (2)(a) through (2)(g) with the court specified in the citation. The data transmission shall use the court's electronic filing interface. A

nonconforming filing is not effective.

(2) The citation issued under authority of this chapter shall contain the following data:

(a) the name of the court before which the person is to appear;

(b) the name of the person cited;

(c) a brief description of the offense charged;

(d) the date, time, and place at which the offense is alleged to have occurred;

(e) the date on which the citation was issued;

(f) the name of the peace officer or public official who issued the citation, and the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested person before a magistrate;

(g) the time and date on or before and after which the person is to appear or a statement that the court will notify the person of the time to appear;

(h) the address of the court in which the person is to appear;

(i) whether the offense is a domestic violence offense; and

(j) a notice containing substantially the following language:

READ CAREFULLY

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You MUST appear in court on or before the time set in this citation or as directed by the court. IF YOU FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

(3) By electronically filing the data with the court, the peace officer or public official certifies to the court that:

(a) the citation or information, including the summons and complaint, was served upon the defendant in accordance with the law;

(b) the defendant committed the offense set forth in the served documents; and

(c) the court to which the defendant was directed to appear is the proper court pursuant to Section 77-7-21.

(4) Notwithstanding Subsection (1), if a citing law enforcement officer is not reasonably able to access the efiling system, the citation need not be filed electronically if being filed with a justice court.

Amended by Chapter 126, 2014 General Session
Amended by Chapter 263, 2014 General Session

77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- Parent signature required -- Information, when required.

(1) (a) A copy of the citation issued under Section 77-7-18 that is filed with the magistrate may be used in lieu of an information to which the person cited may plead guilty or no contest and be sentenced or on which bail may be forfeited.

(b) With the magistrate's approval, a person may voluntarily forfeit bail without appearance being required in any case of a class B misdemeanor or less.

(c) Voluntary forfeiture of bail shall be entered as a conviction and treated the same as if the accused pleaded guilty.

(d) If the person cited is under 18 years of age, and if any of the charges allege a violation of Title 41, the court shall promptly mail a copy of the citation or a notice of

the citation to the address as shown on the citation, to the attention of the parent or guardian of the defendant.

(2) An information shall be filed and proceedings held in accordance with the Rules of Criminal Procedure and all other applicable provisions of this code if the person cited pleads not guilty to the offense charged.

(3) (a) The information is an original pleading.

(b) If a person cited waives by written agreement the filing of the information, the prosecution may proceed on the citation.

Amended by Chapter 292, 2009 General Session

77-7-22. Failure to appear as misdemeanor.

Any person who willfully fails to appear before a court pursuant to a citation issued under the provisions of Section 77-7-18 is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which he was originally cited.

Enacted by Chapter 15, 1980 General Session

77-7-23. Delivery of prisoner arrested without warrant to magistrate -- Transfer to court with jurisdiction -- Violation as misdemeanor.

(1) (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested shall be taken without unnecessary delay to the magistrate in the district court, the precinct of the county, or the municipality in which the offense occurred, except under Subsection (2). An information stating the charge against the person shall be made before the magistrate.

(b) If the justice court judge of the precinct or municipality or the district court judge is not available, the arrested person shall be taken before the magistrate within the same county who is nearest to the scene of the alleged offense or nearest to the jail under Subsection (2), who may act as committing magistrate for arraigning the accused, setting bail, or issuing warrants.

(2) If the arrested person under Subsection (1) must be transported from jail to a magistrate, the person may be taken before the magistrate nearest to the jail rather than the magistrate specified in Subsection (1) for arraignment, setting bail, or issuing warrants.

(3) The case shall then be transferred to the court having jurisdiction. This section does not confer jurisdiction upon a court unless otherwise provided by law.

(4) Any officer or person violating this section is guilty of a class B misdemeanor.

Amended by Chapter 10, 1997 General Session
Amended by Chapter 215, 1997 General Session

77-7-24. Notice to appear in court -- Contents -- Promise to comply -- Signing -- Release from custody -- Official misconduct.

(1) If a person who is arrested for a violation of Title 41, Chapter 6a, Traffic Code, that is punishable as a misdemeanor is immediately taken before a magistrate as

provided under Section 77-7-23, the peace officer shall prepare, in triplicate or more copies, a written notice to appear in court containing:

(a) the name and address of the person;

(b) the number, if any, of the person's driver license;

(c) the license plate number of the person's vehicle;

(d) the offense charged; and

(e) the time and place the person shall appear in court.

(2) The time specified in the notice to appear must be at least five days after the arrest of the person unless the person demands an earlier hearing.

(3) The place specified in the notice to appear shall be made before a magistrate of competent jurisdiction in the county in which the alleged violation occurred.

(4) (a) In order to secure release as provided in this section, the arrested person shall promise to appear in court by signing at least one copy of the written notice prepared by the arresting officer.

(b) The arresting peace officer shall immediately:

(i) deliver a copy of the notice to the person promising to appear; and

(ii) release the person arrested from custody.

(5) A peace officer violating any of the provisions of this section shall be:

(a) guilty of misconduct in office; and

(b) subject to removal from office.

Renumbered and Amended by Chapter 2, 2005 General Session

77-7-25. Keeping of records -- Making and forwarding of abstract upon conviction or forfeiture of bail -- Form and contents -- Official misconduct.

(1) A magistrate or judge of a court shall keep a full record of each case in which a person is charged with:

(a) a violation of this chapter; or

(b) any other law regulating the operation of a motor vehicle on the highway.

(2) (a) Within 10 days after the conviction or forfeiture of bail of a person on a charge of violating a provision of this chapter or other law regulating the operation of a motor vehicle on the highway, the magistrate of the court or clerk of the court in which the conviction was made or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of the court covering the case in which the person was convicted or forfeited bail.

(b) The abstract shall be certified by the person required to prepare the abstract to be true and correct.

(c) A report under this Subsection (2) is not required for a conviction involving the illegal parking or standing of a vehicle.

(3) The abstract must be made in a manner specified by the Driver License Division and shall include the:

(a) name and address of the party charged;

(b) number, if any, of the person's driver license;

(c) license plate number of the vehicle involved;

(d) nature of the offense;

(e) date of hearing;
(f) plea;
(g) judgment, or whether bail was forfeited; and
(h) amount of the fine or forfeiture.
(4) A court shall provide a copy of the report to the Driver License Division on the conviction of a person of manslaughter or other felony in which a vehicle was used.
(5) The failure, refusal, or neglect of a judicial officer to comply with the requirements of this section constitutes misconduct in office and is grounds for removal.
(6) The Driver License Division shall classify and disclose all abstracts received in accordance with Section 53-3-109.

Renumbered and Amended by Chapter 2, 2005 General Session

77-7-26. Improper disposition or cancellation of notice to appear or traffic citation -- Official misconduct -- Misdemeanor.
(1) (a) It is unlawful and official misconduct for any peace officer or other officer or public employee to dispose of:
(i) a notice to appear; or
(ii) traffic citation.
(b) The provisions of Subsection (1)(a) do not apply if the disposal is done with the consent of the magistrate before whom the arrested person was to appear.
(2) A person who cancels or solicits the cancellation of a notice to appear or a traffic citation, in any manner other than as provided by law, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 2, 2005 General Session

77-8-1. Order of magistrate -- Grounds -- Arrested suspect's appearance without order.
(1) A magistrate may issue an order requiring a suspect to appear in a lineup when probable cause exists to believe a crime has been committed and there is reason to believe the suspect committed it.
(2) A suspect who has been arrested, and is in custody, may be required by a peace officer to appear in a lineup without a court order.
(3) Upon application of any suspect and a showing of good cause, a magistrate may order a lineup.

Enacted by Chapter 15, 1980 General Session

77-8-2. Suspect's right to have attorney present.
A suspect has the right to have his attorney present at any lineup. The magistrate or party in charge of the lineup shall notify the suspect of this right. Every suspect unable to employ counsel shall be entitled to representation by an attorney appointed by a magistrate for a lineup either before or after an arrest.

Enacted by Chapter 15, 1980 General Session

77-8-3. Conduct of peace officer.

The peace officers conducting a lineup shall not attempt to influence the identification of any particular suspect.

Enacted by Chapter 15, 1980 General Session

77-8-4. Record of proceedings -- Access by suspect.

The entire lineup procedure shall be recorded, including all conversations between the witnesses and the conducting peace officers. The suspect shall have access to and may make copies of the record and any photographs taken of him or any other persons in connection with the lineup.

Enacted by Chapter 15, 1980 General Session

77-8a-1. Joinder of offenses and of defendants.

(1) Two or more felonies, misdemeanors, or both, may be charged in the same indictment or information if each offense is a separate count and if the offenses charged are:

(a) based on the same conduct or are otherwise connected together in their commission; or

(b) alleged to have been part of a common scheme or plan.

(2) (a) When a felony and misdemeanor are charged together the defendant is afforded a preliminary hearing with respect to both the misdemeanor and felony offenses.

(b) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or conduct or in the same criminal episode.

(c) The defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

(d) When two or more defendants are jointly charged with any offense, they shall be tried jointly unless the court in its discretion on motion or otherwise orders separate trials consistent with the interests of justice.

(3) (a) The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants, if there is more than one, could have been joined in a single indictment or information.

(b) The procedure shall be the same as if the prosecution were under a single indictment or information.

(4) (a) If the court finds a defendant or the prosecution is prejudiced by a joinder of offenses or defendants in an indictment or information or by a joinder for trial together, the court shall order an election of separate trials of separate counts, grant a severance of defendants, or provide other relief as justice requires.

(b) A defendant's right to severance of offenses or defendants is waived if the motion is not made at least five days before trial. In ruling on a motion by defendant for severance, the court may order the prosecutor to disclose any statements made by the defendants which he intends to introduce in evidence at the trial.

Enacted by Chapter 201, 1990 General Session

77-9-1. Authority of peace officer of another state.

A peace officer of another state or the District of Columbia who enters this state in fresh pursuit and continues in fresh pursuit of a person in order to arrest him on the ground that he is reasonably believed to have committed a felony in another state, has the same authority to arrest and hold a person in custody as a peace officer of this state. Fresh pursuit does not require instant action, but pursuit without unreasonable delay.

Enacted by Chapter 15, 1980 General Session

77-9-2. Procedure after arrest.

An officer who has made an arrest pursuant to Section 77-9-1 shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made. The magistrate shall conduct a hearing to determine the lawfulness of the arrest. If he finds the arrest was lawful, the magistrate may commit the person arrested for a reasonable time or may admit the person to bail pending extradition proceedings.

Enacted by Chapter 15, 1980 General Session

77-9-3. Authority of peace officer of this state beyond normal jurisdiction.

(1) Any peace officer authorized by any governmental entity of this state may exercise a peace officer's authority beyond the limits of such officer's normal jurisdiction as follows:

(a) when in fresh pursuit of an offender for the purpose of arresting and holding that person in custody or returning the suspect to the jurisdiction where the offense was committed;

(b) when a public offense is committed in such officer's presence;

(c) when participating in an investigation of criminal activity which originated in the officer's normal jurisdiction in cooperation with the local authority; or

(d) when called to assist peace officers of another jurisdiction.

(2) (a) Any peace officer, prior to taking any action authorized by Subsection (1), shall notify and receive approval of the local law enforcement authority, or if the prior contact is not reasonably possible, notify the local law enforcement authority as soon as reasonably possible.

(b) Unless specifically requested to aid a peace officer of another jurisdiction or otherwise as provided for by law, no legal responsibility for a peace officer's action outside his normal jurisdiction, except as provided in this section, shall attach to the local law enforcement authority.

Amended by Chapter 282, 1998 General Session

77-10a-1. Definitions.

As used in this chapter:

(1) "Clerk of the court" means the state court administrator or his designee.

(2) "Managing judge" means the supervising judge when he retains authority to manage a grand jury, or the district court judge to whom the supervising judge delegates management of a grand jury.

(3) "Presiding officer" means the presiding officer of the Judicial Council.

(4) "Subject" means a person whose conduct is within the scope of the grand jury's investigation, and that conduct exposes the person to possible criminal prosecution.

(5) "Supervising judge" means the district court judge appointed by the presiding officer to supervise the five-judge grand jury panel.

(6) "Target" means a person regarding whom the attorney for the state, the special prosecutor, or the grand jury has substantial evidence that links that person to the commission of a crime and who could be indicted or charged with that crime.

(7) "Witness" means a person who appears before the grand jury either voluntarily or pursuant to subpoena for the purpose of providing testimony or evidence for the grand jury's use in discharging its responsibilities.

Enacted by Chapter 318, 1990 General Session

77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand jury.

(1) (a) The presiding officer of the Judicial Council shall appoint a panel of five judges from the district courts of the state to hear in secret all persons claiming to have information that would justify the calling of a grand jury. The presiding officer may appoint senior status district court judges to the panel. The presiding officer shall designate one member of the panel as supervising judge to serve at the pleasure of the presiding officer. The panel has the authority of the district court.

(b) To ensure geographical diversity on the panel one judge shall be appointed from the first or second district for a five-year term, one judge shall be appointed from the third district for a four-year term, one judge shall be appointed from the fourth district for a three-year term, one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year term, and one judge shall be appointed from the third district for a one-year term. Following the first term, all terms on the panel are for five years.

(c) The panel shall schedule hearings in each judicial district at least once every three years and may meet at any location within the state. Three members of the panel constitute a quorum for the transaction of panel business. The panel shall act by the concurrence of a majority of members present and may act through the supervising judge or managing judge. The schedule for the hearings shall be set by the panel and published by the Office of the Court Administrator. Persons who desire to appear before the panel shall schedule an appointment with the Office of the Court Administrator at least 10 days in advance. If no appointments are scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed under oath and examined by the judges conducting the hearings. Hearsay evidence may be presented at the hearings only under the same provisions and limitations that apply to preliminary hearings.

(2) (a) If the panel finds good cause to believe a grand jury is necessary, the panel shall make its findings in writing and may order a grand jury to be summoned.

(b) The panel may refer a matter to the attorney general, county attorney, district attorney, or city attorney for investigation and prosecution. The referral shall contain as much of the information presented to the panel as the panel determines relevant. The attorney general, county attorney, district attorney, or city attorney shall report to the panel the results of any investigation and whether the matter will be prosecuted by a prosecutor's information. The report shall be filed with the panel within 120 days after the referral unless the panel provides for a different amount of time. If the panel is not satisfied with the action of the attorney general, county attorney, district attorney, or city attorney, the panel may order a grand jury to be summoned.

(3) When the attorney general, a county attorney, a district attorney, municipal attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the supervising judge that in his judgment a grand jury is necessary because of criminal activity in the state, the panel shall order a grand jury to be summoned if the panel finds good cause exists.

(4) In determining whether good cause exists under Subsection (3), the panel shall consider, among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process.

(5) A written certification under Subsection (3) shall contain a statement that in the prosecutor's judgement a grand jury is necessary, but the certification need not contain any information which if disclosed may create a risk of:

(a) destruction or tainting of evidence;

(b) flight or other conduct by the subject of the investigation to avoid prosecution;

(c) damage to a person's reputation or privacy;

(d) harm to any person; or

(e) a serious impediment to the investigation.

(6) A written certification under Subsection (3) shall be accompanied by a statement of facts in support of the need for a grand jury.

(7) The supervising judge shall seal any written statement of facts submitted under Subsection (6).

(8) The supervising judge may at the time the grand jury is summoned:

(a) order that it be drawn from the state at large as provided in this chapter or from any district within the state; and

(b) retain authority to supervise the grand jury or delegate the supervision of the grand jury to any judge of any district court within the state.

(9) If after the certification under Subsection (3) the panel does not order the summoning of a grand jury or the grand jury does not return an indictment regarding the subject matter of the certification, the prosecuting attorney may release to the public a copy of the written certification if in the prosecutor's judgment the release does not create a risk as described in Subsection (5).

Amended by Chapter 34, 2010 General Session
Amended by Chapter 96, 2010 General Session

77-10a-3. Scope of grand jury inquiry.

Any grand jury summoned under this chapter may inquire into and indict for any criminal activity occurring within the state.

Enacted by Chapter 318, 1990 General Session

77-10a-4. Number of members -- Number required for indictment.

(1) Any grand jury summoned under this chapter shall consist of not fewer than nine or more than 15 members.

(2) The grand jury may return an indictment only if at least three-fourths of the members, or the next highest whole number, vote in favor of the indictment.

Enacted by Chapter 318, 1990 General Session

77-10a-5. Grand jurors -- Qualification and selection -- Limits on disclosure.

(1) Grand jurors shall meet the qualifications provided for jurors generally in Title 78B, Chapter 1, Part 1, Jury and Witness Act. Grand jurors shall be selected from the qualified jury list as provided in Section 78B-1-107.

(2) The names of grand jurors are classified as protected records under Title 63G, Chapter 2, Government Records and Access Management Act.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

77-10a-7. Selection of grand jurors -- Notice -- Examination -- Qualification -- Alternates.

(1) When the supervising judge orders that a grand jury be summoned, the managing judge shall direct the clerk to select at random from the master list the number of names determined by the managing judge to ensure that the required number of grand jurors under this chapter may be qualified to constitute the grand jury.

(2) (a) The managing judge may direct the clerk to draw additional names from the master list so alternate grand jurors may be designated at the time the grand jury is selected.

(b) Alternate grand jurors shall be drawn in the same manner and have the same qualifications as the regular grand jurors. If impanelled, they are subject to the same challenges, shall take the same oath, and have the same functions, powers, facilities, and privileges as the regular jurors.

(3) The clerk shall cause each person drawn for service on the grand jury or as an alternate to be notified of when and where to report for service. Notice may be given by telephone or by service of a summons, either personally or by first class mail addressed to the prospective juror's current residence, place of business, or post office box.

(4) The names of those drawn for service on the grand jury or as alternates and the contents of all grand juror questionnaires may not be made available to the public.

(5) (a) At the time and place specified for the appearance of the persons

summoned to serve as grand jurors and alternates, the managing judge shall examine the prospective grand jurors and alternates. Before accepting any person as a grand juror or alternate, the managing judge shall be satisfied that the person has no bias or prejudice that would prevent him from fairly and dispassionately considering the matters presented to the grand jury.

(b) When drawn and qualified, the person shall be accepted for service unless the managing judge in his discretion and on the application of the juror excuses him from service before he is sworn.

(6) The managing judge may dismiss the grand jury panel if he finds there has been a material departure from the methods prescribed for the selecting, drawing, and return of the grand jury, or if there has been an intentional omission by the proper officer to summon one or more of the grand jurors drawn.

(7) When 15 of the persons summoned as grand jurors who are qualified and not excused remain, they are the grand jury. If more than 15 qualified persons remain, their names shall be written by the clerk on separate slips, folded to conceal the names, and placed in a box. The clerk shall then draw 15 slips, and the persons whose names are drawn are the grand jury.

(8) (a) When the number of persons to be designated as alternate grand jurors who are qualified and not excused remain, they are the alternate grand jurors.

(b) If more than the number of alternate grand jurors designated by the managing judge remain, their names shall be written by the clerk on separate slips, folded to conceal the names, and placed in a box. The clerk shall then draw slips until the designated number of alternate grand jurors are selected.

Enacted by Chapter 318, 1990 General Session

77-10a-8. Challenge of prospective grand jurors -- Failure to comply in selection of jurors -- Remedies.

(1) The attorney general, county attorney, district attorney, or special prosecutor may challenge:

(a) the array of grand jurors on the ground the grand jury was not selected, drawn, or summoned in accordance with law; and

(b) an individual juror on the ground the juror is not legally qualified.

(2) Challenges shall be made before the administration of the oath to the jurors and shall be tried to the court managing the grand jury.

(3) A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge.

(4) In criminal cases the defendant or attorney for the state may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with this chapter in selecting the grand jury. However, he must do so before the voir dire examination begins or within seven days after the defendant or attorney for the state discovered or could have discovered the grounds by the exercise of diligence, whichever is earlier, or the motion is considered waived.

(5) (a) Any motion filed under Subsection (1), (3), or (4) must contain a sworn statement of facts which, if true, would constitute a substantial failure to comply with the

provisions of this chapter. The moving party may present in support of the motion the testimony of the clerk if he is available, any relevant records and papers used by the clerk that were not made public or otherwise available, and any other relevant evidence.

(b) If the managing judge determines there has been a substantial failure to comply with the provisions of this chapter in selecting the grand jury, he shall stay the proceedings pending the selection of a grand jury in conformity with this chapter or dismiss the indictment, whichever is appropriate.

(6) (a) The procedures prescribed by this section are the exclusive means by which a party accused of a crime or an attorney for the state may challenge any grand jury on the ground it was not selected in conformity with this chapter.

(b) An indictment may not be dismissed in any case on the ground that one or more members of the grand jury that returned the indictment were not legally qualified if it appears from the record kept by the grand jury that eight or more jurors, after deducting the number not qualified, concurred in finding the indictment.

Amended by Chapter 38, 1993 General Session

77-10a-9. Oath for grand jurors.

Grand jurors and those selected as alternates shall take the following oath:

"Do you, and each of you, solemnly swear that you will diligently inquire into and make true presentment or indictment of all matters and things as are given you in charge or otherwise come to your knowledge, touching upon your grand jury service; to keep secret the counsel of the state, your fellows, and yourselves; to not present or indict any person through hatred, malice, or ill will; to not leave any person unpresented or unindicted through fear, favor, or affection, nor for any reward, or hope or promise thereof; but in all your investigations, presentments, and indictments to seek and present the truth, the whole truth and nothing but the truth, to the best of your skill and understanding? If so, answer 'I do.'"

Enacted by Chapter 318, 1990 General Session

77-10a-10. Charge of grand jury -- Rights and duties.

Upon impanelment of each grand jury, the judge managing the grand jury shall charge the grand jury and inform it of:

(1) its duty to inquire into offenses against the criminal laws alleged to have been committed within the jurisdiction;

(2) its independent right to call and interrogate witnesses;

(3) its right to request the production of documents or other evidence, including exculpatory evidence;

(4) the necessity of finding credible evidence of each material element of any crime charged before returning an indictment;

(5) the need to be satisfied that clear and convincing evidence exists that tends to show that a crime was committed by the person or persons accused before returning an indictment;

(6) its right to have the prosecutor present it with draft indictments for less serious charges than those originally requested by the prosecutor;

(7) the obligation of secrecy; and
(8) other duties and rights as the court finds advisable.

Enacted by Chapter 318, 1990 General Session

77-10a-11. Jury foreman -- Compensation of grand jurors.

(1) The managing judge shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman may administer oaths and affirmations and shall sign all indictments. The foreman or another juror designated by him shall keep record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court. The record may not be made public except on order of the managing judge.

(2) During the absence of the foreman the deputy foreman shall act as foreman.

(3) A grand juror shall be compensated at the same rate as a juror in a state district court for each day of service.

Enacted by Chapter 318, 1990 General Session

77-10a-12. Representation of state -- Appointment and compensation of special prosecutor.

(1) The state may be represented before any grand jury summoned in the state by:

(a) the attorney general or any assistant attorney general;
(b) a county attorney or any deputy county attorney;
(c) a district attorney or any deputy district attorney;
(d) a municipal attorney or any deputy municipal attorney; and
(e) special prosecutors appointed under this chapter and their assistants.

(2) The supervising judge shall determine if a special prosecutor is necessary. A special prosecutor may be appointed only upon good cause shown and after the supervising judge makes a written finding that a conflict of interest exists in the Office of the Attorney General, the office of the county attorney, district attorney, or municipal attorney who would otherwise represent the state before the grand jury.

(3) In selecting a special prosecutor, the supervising judge shall give preference to the attorney general and assistant attorneys general, county attorneys, district attorneys, or municipal attorneys and their deputies.

(4) (a) The compensation of a special prosecutor appointed under this chapter who is an employee of the Office of the Attorney General, the office of a county attorney, district attorney, or municipal attorney is only the current compensation received in that office.

(b) The compensation for an appointed special prosecutor who is not an employee of a prosecutorial office under Subsection (4)(a) shall be comparable to the compensation of a deputy or assistant attorney general having similar experience to that of the special prosecutor.

(5) The attorney general, county attorney, district attorney, or municipal attorney may elect to have a special prosecutor appointed by the supervising judge at the expense of the governmental entity supporting the electing prosecutor. Upon receipt of

written notice from the prosecutor of that election, the supervising judge shall appoint a special prosecutor in accordance with this section. The electing prosecutor's supporting governmental entity shall reimburse the state for expenses incurred in appointment and compensation of the special prosecutor.

Amended by Chapter 96, 2010 General Session

77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.

(1) The managing judge shall designate the place where the grand jury meets. The grand jury may, upon request and with the permission of the managing judge, meet and conduct business any place within the state. Subject to the approval of the managing judge the grand jury shall determine the times at which it meets.

(2) (a) Attorneys representing the state, special prosecutors appointed under Section 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and a court reporter or operator of a recording device to record the proceedings may be present while the grand jury is in session.

(b) No person other than the jurors may be present while the grand jury is deliberating.

(3) (a) The attorneys representing the state and the special prosecutors may subpoena witnesses to appear before the grand jury and may subpoena evidence in the name of the grand jury without the prior approval or consent of the grand jury or the court. The jury may request that other witnesses or evidence be subpoenaed.

(b) Subpoenas may be issued in the name of the grand jury to any person located within the state and for any evidence located within the state or as otherwise provided by law.

(c) Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a victim of a crime, to testify before a grand jury may not be served less than 72 hours before the victim is required to testify.

(d) A subpoena may be served upon a minor less than 72 hours before the minor is required to testify if the managing judge makes a factual finding that the minor was intentionally concealed to prevent service or that a shorter period is reasonably necessary to prevent:

(i) a risk to the minor's safety;

(ii) the concealment or removal of the minor from the jurisdiction;

(iii) intimidation or coercion of the minor or a family member of the minor; or

(iv) undue influence on the minor regarding the minor's testimony.

(e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf of the minor and is not a basis for invalidation of the minor's testimony or any indictment issued by the grand jury.

(f) The service requirement of Subsection (3)(d) may be asserted by a parent or legal guardian of the minor on the minor's behalf.

(g) If the managing judge finds it necessary to prevent any of the actions enumerated in Subsections (3)(d)(i) through (iv) or to otherwise protect the minor, the judge may appoint a guardian ad litem to receive service on behalf of the minor, to

represent the minor, and to protect the interests of the minor.

(h) If the minor served under Subsection (3)(d), has no parent, legal guardian, or guardian ad litem with whom to confer prior to the grand jury hearing, the managing judge shall appoint legal counsel to represent the minor at the hearing.

(i) For any minor served with a subpoena under this section, attorneys representing the state, or special prosecutors appointed under Section 77-10a-12, shall interview and prepare the minor in the presence of the minor's parent or legal guardian and their attorney, or a guardian ad litem at least 24 hours prior to the time the minor is required to testify. The provisions of this subsection requiring the presence of the minor's parent do not apply if:

(i) the parent is the subject of the grand jury investigation; or

(ii) the parent is engaged in, or conspires with, another to frustrate the protections and purposes of Subsection (3)(d).

(j) The managing judge may enter any order necessary to secure compliance with any subpoena issued in the name of the grand jury.

(4) (a) Any witness who appears before the grand jury shall be advised, by the attorney for the state or the special prosecutor, of his right to be represented by counsel.

(b) A witness who is also a subject as defined in Section 77-10a-1 shall at the time he appears as a witness be advised:

(i) of his right to be represented by counsel;

(ii) that he is a subject;

(iii) that he may claim his privilege against self-incrimination; and

(iv) of the general scope of the grand jury's investigation.

(c) A witness who is also a target as defined in Section 77-10a-1 shall at the time he appears as a witness, be advised:

(i) of his right to be represented by counsel;

(ii) that he is a target;

(iii) that he may claim his privilege against self-incrimination;

(iv) that the attorney for the state, the special prosecutor, or the grand jury is in possession of substantial evidence linking him to the commission of a crime for which he could be charged; and

(v) of the general nature of that charge and of the evidence that would support the charge.

(d) This Subsection (4) does not require the attorney for the state, the special prosecutor, or the grand jury to disclose to any subject or target the names or identities of witnesses, sources of information, or informants, or disclose information in detail or in a fashion that would jeopardize or compromise any ongoing criminal investigation or endanger any person or the community.

(5) (a) The grand jury shall receive evidence without regard for the formal rules of evidence, except the grand jury may receive hearsay evidence only under the same provisions and limitations that apply to preliminary hearings.

(b) Any person, including a witness who has previously testified or produced books, records, documents, or other evidence, may present exculpatory evidence to the attorney representing the state or the special prosecutor and request that it be presented to the grand jury, or request to appear personally before the grand jury to

testify or present evidence to that body. The attorney for the state or the special prosecutor shall forward the request to the grand jury.

(c) When the attorney for the state or the special prosecutor is personally aware of substantial and competent evidence negating the guilt of a subject or target that might reasonably be expected to lead the grand jury not to indict, he shall present or otherwise disclose the evidence to the grand jury before the grand jury is asked to indict that person.

(6) (a) The managing judge has the contempt power and authority inherent in the court over which he presides and as provided by statute.

(b) When a witness in any proceeding before or ancillary to any grand jury appearance refuses to comply with an order from the managing judge to testify or provide other information, including any book, paper, document, record, recording, or other material without having a recognized privilege, the attorney for the state or special prosecutor may apply to the managing judge for an order directing the witness to show cause why he should not be held in contempt.

(c) After submission of the application and a hearing at which the witness is entitled to be represented by counsel, the managing judge may hold the witness in contempt and order that he be confined, upon a finding that the refusal was not privileged.

(d) A hearing may not be held under this part unless 72 hours notice is given to the witness who has refused to comply with the order to testify or provide other information, except a witness may be given a shorter notice if the managing judge upon a showing of special need so orders.

(e) Any confinement for refusal to comply with an order to testify or produce other information shall continue until the witness is willing to give the testimony or provide the information. A period of confinement may not exceed the term of the grand jury, including extensions, before which the refusal to comply with the order occurred. In any event the confinement may not exceed one year.

(f) A person confined under this Subsection (6) for refusal to testify or provide other information concerning any transaction, set of transactions, event, or events may not be again confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify or provide other information concerning the same transaction, set of transactions, event, or events.

(g) Any person confined under this section may be admitted to bail or released in accordance with local procedures pending the determination of an appeal taken by him from the order of his confinement unless the appeal affirmatively appears to be frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, pursuant to an expedited schedule and in no event more than 30 days from the filing of the appeal.

(7) (a) All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding does not affect the validity of any prosecution or indictment. The recording or reporter's notes or any transcript prepared from them shall remain in the custody or control of the attorney for the state or the special prosecutor unless otherwise ordered by the managing judge in a particular case.

(b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any person to whom disclosure is made under the provisions of this section may not disclose matters occurring before the grand jury except as otherwise provided in this section. A knowing violation of this provision may be punished as a contempt of court.

(c) Disclosure otherwise prohibited by this section of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(i) an attorney for the state or a special prosecutor for use in the performance of that attorney's duty; and

(ii) government personnel, including those of state, local, and federal entities and agencies, as are considered necessary by the attorney for the state or special prosecutor to assist him in the performance of his duty to enforce the state's criminal laws.

(d) Any person to whom matters are disclosed under this section may not utilize that grand jury material for any purpose other than assisting the attorney for the state or the special prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An attorney for the state or the special prosecutor shall promptly provide the managing judge with the names of the persons to whom the disclosure has been made and shall certify that the attorney has advised the person of his obligation of secrecy under this section.

(e) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may also be made when:

(i) directed by the managing judge or by any court before which the indictment that involves matters occurring before the grand jury that are subject to disclosure is to be tried, preliminary to or in connection with a judicial proceeding;

(ii) permitted by the managing judge at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) the disclosure is made by an attorney for the state or the special prosecutor to another state or local grand jury or a federal grand jury;

(iv) permitted by the managing judge at the request of an attorney for the state or the special prosecutor, upon a showing that the matters may disclose a violation of federal criminal law, to an appropriate official of the federal government for the purpose of enforcing federal law; or

(v) showing of special need is made and the managing judge is satisfied that disclosure of the information or matters is essential for the preparation of a defense.

(f) When the matters are transcripts of testimony given by witnesses, the state or special prosecutor intends to call in the state's case in chief in any trial upon an indictment returned by the grand jury before which the witnesses testified, the attorney for the state or the special prosecutor shall, no later than 30 days before trial, provide the defendant with access to the transcripts. The attorney for the state or the special prosecutor shall at the same time provide the defendant with access to all exculpatory evidence presented to the grand jury prior to indictment.

(g) When the managing judge orders disclosure of matters occurring before the

grand jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge directs.

(h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon the attorney for the state or the special prosecutor, the parties to the judicial proceeding if disclosure is sought in connection with the proceeding, and other persons as the managing judge directs. The managing judge shall afford those persons a reasonable opportunity to appear and be heard.

(8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and so long as necessary to prevent disclosure of matters occurring before the grand jury other than as provided in this section.

(9) Subject to any right to an open hearing in contempt proceedings, the managing judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

Amended by Chapter 22, 2012 General Session

77-10a-14. Concurrence for indictment -- Proof -- Validity -- Disclosure.

(1) An indictment may be found only upon the concurrence of at least three-fourths, or the next highest whole number, of the grand jurors.

(2) An indictment may not be found unless the grand jurors who vote in favor of the indictment find there is clear and convincing evidence to believe the crime to be charged was committed and the person to be indicted committed it. An indictment may not be returned solely on the basis of incompetent hearsay.

(3) To be valid, the indictment shall be signed by the foreman and the attorney for the state or special prosecutor and returned to the managing judge in open court. The clerk of the managing court shall file the indictment upon receipt.

(4) To be valid, the indictment shall be signed by the foreman and then returned to the managing judge in open court. The clerk of the managing court shall file the indictment upon receipt.

(5) (a) The managing judge who takes the return of the indictment may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial.

(b) The clerk shall then seal the indictment and, except for transferring the indictment to the appropriate court for trial as provided by this chapter, may not permit any person to disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

Enacted by Chapter 318, 1990 General Session

77-10a-15. Return and transfer of indictment.

Immediately upon the return of an indictment the managing judge shall enter an order transferring the indictment to a court with appropriate jurisdiction and proper venue under Section 76-1-202 to try the matter.

Enacted by Chapter 318, 1990 General Session

77-10a-16. Return of indictment -- Warrant of arrest -- Bail.

(1) The managing judge may upon return of an indictment, when the defendant is not in custody, cause a warrant to be issued for the arrest of the defendant charged and shall fix an appropriate bail.

(2) Return of any warrant of arrest shall be in the court to which the indictment is transferred for trial. The court to which the return is made may review bail and any conditions of detention or release.

Enacted by Chapter 318, 1990 General Session

77-10a-17. Grand jury report on noncriminal misconduct -- Action on the report.

(1) A grand jury may upon completion of its original term or each extension, with the concurrence of a majority of its members, submit to the managing judge a report concerning noncriminal misconduct, malfeasance, or misfeasance in office as a basis for a recommendation of removal or disciplinary action against a public officer or employee.

(2) The judge to whom the report is submitted shall examine it and the minutes of the grand jury. The judge shall make an order accepting and filing the report as a public record, but only if the judge is satisfied that it complies with Subsection (1) and:

(a) the report is based on facts revealed during the grand jury's investigation and is supported by a preponderance of evidence; and

(b) each person named and any reasonable number of witnesses on his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of the report.

(3) An order accepting a report made under this section and the report itself shall be sealed by the managing judge and may not be filed as a public record or be subject to subpoena or otherwise made public until:

(a) at least 31 days after a copy of the order and report are served on each public officer or employee named and an answer has been filed;

(b) the time for filing an answer has expired; or

(c) an appeal is taken or until all rights of review of the public officer or employee named have expired or terminated in an order accepting the report.

(4) (a) An order accepting the report may not be entered until 30 days after the delivery of the report to the public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

(b) The managing judge may issue orders it finds necessary and appropriate to prevent unauthorized publication of a report. Unauthorized publication of a report may be punished as contempt of court.

(5) (a) A public officer or employee named in a report may file with the clerk a verified answer to the report not later than 20 days after service of the order and report upon him. Upon a showing of good cause, the managing judge may grant the public officer or employee an extension of time to file an answer and may authorize limited publication of the report as necessary to prepare an answer.

(b) The answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in the report. Except for those parts the managing judge determines have been inserted scandalously, prejudiciously, or unnecessarily, the answer becomes an appendix to the report.

(6) Upon the submission of a report made under this section the managing judge shall order the report sealed if he finds the filing of the report as a public record may prejudice fair consideration of a pending criminal matter. The report may not be subject to subpoena or public inspection during the pendency of the criminal matter except upon order of the managing judge.

(7) (a) When the managing judge to whom a report is submitted is not satisfied that the report complies with the provisions of this section, he may direct that additional testimony be taken before the same grand jury or he shall make an order sealing the report.

(b) If the report is sealed, it may not be filed as a public record or be subject to subpoena or otherwise made public until the provisions of this section are met.

(8) A grand jury's term may be extended by the managing judge so additional testimony may be taken or the provisions of this section met.

Enacted by Chapter 318, 1990 General Session

77-10a-18. Grand jury term of service -- Excusing a juror.

(1) A grand jury shall serve until discharged by the managing judge. However, a grand jury may not serve more than 18 months unless the managing judge extends the service of the grand jury, upon determining an extension is in the public interest. The extension may be no longer than a period of six months.

(2) The managing judge may at any time excuse a juror either temporarily or permanently for cause shown. If a juror is excused permanently, the managing judge may impanel another juror in his place.

Enacted by Chapter 318, 1990 General Session

77-10a-19. Compensation for special prosecutors.

(1) Compensation for special prosecutors under this section shall be paid by the Judicial Council. For this purpose, there is appropriated from the General Fund to the Judicial Council $50,000 as a separate line item in the budget of the Judicial Council for the fiscal year 1989-1990. The line item shall be nonlapsing.

(2) (a) If during the fiscal year compensation of special prosecutors under this chapter exceeds $50,000, additional compensation shall be requested as a supplemental appropriation from the Legislature.

(b) If during the fiscal year compensation of special prosecutors under this chapter is less than $50,000, the balance carries over to the next fiscal year, and the appropriation for that next fiscal year for prosecutor compensation shall be no more than the amount necessary to total $50,000 when added to the nonlapsing balance carried over from the prior fiscal year.

Enacted by Chapter 318, 1990 General Session

77-10a-20. Expenses of grand jury -- Appropriation -- Payment by state or county.

(1) (a) The expenses of operation of a grand jury summoned under this chapter shall be paid by the Judicial Council, except under Subsection (2).

(b) Expenses include grand juror fees, rental of a facility, cost of transcripts, payment for a court reporter or electronic recording device, secretarial services, and investigation and recorder staff.

(c) For this purpose, an appropriation of $25,000 is made from the General Fund to the Judicial Council as a separate line item in the budget of the Judicial Council.

(d) Any amount of this appropriation remaining at the end of the fiscal year lapses into the General Fund.

(2) (a) When a grand jury is summoned to investigate an allegation that is determined to be primarily a county-related issue, the expenses of the grand jury shall be paid by the county or counties involved.

(b) The supervising judge shall determine before the grand jury is called if the allegations involve primarily the state or a county or counties for purposes of determining payment of expenses under this section.

(3) The expenses of any grand jury and the compensation for any special prosecutor appointed under this chapter shall be reviewed and approved or disapproved by the clerk of the court under the direction of the managing judge.

Amended by Chapter 372, 1997 General Session

77-13-1. Kinds of pleas.

(1) There are five kinds of pleas to an indictment or information:

(a) not guilty;

(b) guilty;

(c) no contest;

(d) not guilty by reason of insanity; and

(e) guilty with a mental illness at the time of the offense.

(2) An alternative plea of not guilty or not guilty by reason of insanity may be entered.

Amended by Chapter 366, 2011 General Session

77-13-2. Record of plea -- Effect of each kind of plea.

Every plea shall be entered upon the record of the court and shall have the following effect:

(1) A plea of not guilty is a denial of the guilt of the accused and puts in issue every material allegation of the information or indictment;

(2) A plea of guilty is an acknowledgment that the accused is guilty of the offense charged; and

(3) A plea of no contest indicates the accused does not challenge the charges in the information or indictment and if accepted by the court shall have the same effect as a plea of guilty and imposition of sentence may be rendered in the same manner as if a

plea of guilty had been entered.

Enacted by Chapter 15, 1980 General Session

77-13-3. Court approval of no contest plea required.

A plea of no contest may be entered by the accused only upon approval of the court and only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

Enacted by Chapter 15, 1980 General Session

77-13-4. Felonies -- Entry in open court.

All pleas in felony cases shall be entered by the defendant in open court and the proceedings recorded.

Enacted by Chapter 15, 1980 General Session

77-13-5. Failure to plead -- Not guilty entered.

When a defendant does not enter a plea, the court shall enter a plea of not guilty for him.

Enacted by Chapter 15, 1980 General Session

77-13-6. Withdrawal of plea.

(1) A plea of not guilty may be withdrawn at any time prior to conviction.

(2) (a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.

(b) A request to withdraw a plea of guilty or no contest, except for a plea held in abeyance, shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied. For a plea held in abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest.

(c) Any challenge to a guilty plea not made within the time period specified in Subsection (2)(b) shall be pursued under Title 78B, Chapter 9, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.

Amended by Chapter 3, 2008 General Session

77-14-1. Time and place of alleged offense -- Specification.

The prosecuting attorney, on timely written demand of the defendant, shall within 10 days, or such other time as the court may allow, specify in writing as particularly as is known to him the place, date and time of the commission of the offense charged.

Enacted by Chapter 15, 1980 General Session

77-14-2. Alibi -- Notice requirements -- Witness lists.

(1) A defendant, whether or not written demand has been made, who intends to

offer evidence of an alibi shall, not less than 10 days before trial or at such other time as the court may allow, file and serve on the prosecuting attorney a notice, in writing, of his intention to claim alibi. The notice shall contain specific information as to the place where the defendant claims to have been at the time of the alleged offense and, as particularly as is known to the defendant or his attorney, the names and addresses of the witnesses by whom he proposes to establish alibi. The prosecuting attorney, not more than five days after receipt of the list provided herein or at such other time as the court may direct, shall file and serve the defendant with the addresses, as particularly as are known to him, of the witnesses the state proposes to offer to contradict or impeach the defendant's alibi evidence.

(2) The defendant and prosecuting attorney shall be under a continuing duty to disclose the names and addresses of additional witnesses which come to the attention of either party after filing their alibi witness lists.

(3) If a defendant or prosecuting attorney fails to comply with the requirements of this section, the court may exclude evidence offered to establish or rebut alibi. However, the defendant may always testify on his own behalf concerning alibi.

(4) The court may, for good cause shown, waive the requirements of this section.

Enacted by Chapter 15, 1980 General Session

77-14-3. Testimony regarding mental state of defendant or another -- Notice requirements -- Right to examination.

(1) (a) If the prosecution or the defense intends to call any expert to testify at trial or at any hearing regarding the mental state of the defendant or another, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before any hearing at which the testimony is offered. Notice shall include the name and address of the expert, the expert's curriculum vitae, and a copy of the expert's report.

(b) The expert shall prepare a written report relating to the proposed testimony. If the expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed testimony including any opinion and the bases and reasons of that opinion, the party intending to call the expert shall provide a written explanation of the expert's anticipated testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by the expert when available.

(2) As soon as practicable after receipt of the expert's report, the party receiving notice shall provide notice to the other party of witnesses whom the party anticipates calling to rebut the expert's testimony, including the name and address of any expert witness and the expert's curriculum vitae. If available, a report of any rebuttal expert shall be provided. If the rebuttal expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed rebuttal testimony, or in the event the witness is not an expert, the party intending to call the rebuttal witness shall provide a written explanation of the witness's anticipated rebuttal testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by any rebuttal expert when

available.

(3) If the prosecution or the defense proposes to introduce testimony of an expert which is based upon personal contact, interview, observation, or psychological testing of the defendant, testimony of an expert involving a mental diagnosis of the defendant, or testimony of an expert that the defendant does or does not fit a psychological or sociological profile, the opposing party shall have a corresponding right to have its own expert examine and evaluate the defendant.

(4) This section applies to any trial, sentencing hearing, and other hearing, excluding a preliminary hearing, whether or not the defendant proposes to offer evidence of the defense of insanity or diminished mental capacity.

(5) If the defendant or the prosecution fails to meet the requirements of this section, the opposing party shall be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony. If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions.

(6) This section may not require the admission of evidence not otherwise admissible.

Amended by Chapter 139, 1994 General Session

77-14-4. Insanity or diminished mental capacity -- Notice requirement.

(1) If a defendant proposes to offer evidence that the defendant is not guilty as a result of insanity or that the defendant had diminished mental capacity, or proposes to offer evidence in mitigation of a criminal homicide or attempted criminal homicide offense under Subsection 76-5-205.5(1)(a), the defendant shall file and serve the prosecuting attorney with written notice of the intention to claim the defense at the time of arraignment or as soon afterward as practicable, but not fewer than 30 days before the trial.

(2) If the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, the court shall proceed in accordance with the requirements described in Section 77-16a-301.

Amended by Chapter 206, 2009 General Session

77-14-6. Entrapment -- Notice of claim required.

Notice of a claim of entrapment shall be given by the defendant in accord with Section 76-2-303.

Amended by Chapter 194, 1986 General Session

77-15-1. Incompetent person not to be tried for public offense.

No person who is incompetent to proceed shall be tried for a public offense.

Amended by Chapter 256, 2000 General Session

77-15-2. "Incompetent to proceed" defined.

For the purposes of this chapter, a person is incompetent to proceed if he is suffering from a mental disorder or mental retardation resulting either in:

(1) his inability to have a rational and factual understanding of the proceedings against him or of the punishment specified for the offense charged; or

(2) his inability to consult with his counsel and to participate in the proceedings against him with a reasonable degree of rational understanding.

Amended by Chapter 162, 1994 General Session

77-15-3. Petition for inquiry as to defendant or prisoner -- Filing -- Contents.

(1) Whenever a person charged with a public offense or serving a sentence of imprisonment is or becomes incompetent to proceed, as defined in this chapter, a petition may be filed in the district court of the county where the charge is pending or where the person is confined.

(2) (a) The petition shall contain a certificate that it is filed in good faith and on reasonable grounds to believe the defendant is incompetent to proceed. The petition shall contain a recital of the facts, observations, and conversations with the defendant that have formed the basis for the petition. If filed by defense counsel, the petition shall contain such information without invading the lawyer-client privilege.

(b) The petition may be based upon knowledge or information and belief and may be filed by the party alleged incompetent to proceed, any person acting on his behalf, the prosecuting attorney, or any person having custody or supervision over the person.

Amended by Chapter 162, 1994 General Session

77-15-4. Court may raise issue of competency at any time.

The court in which a charge is pending may raise the issue of the defendant's competency at any time. If raised by the court, counsel for each party shall be permitted to address the issue of competency.

Amended by Chapter 162, 1994 General Session

77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.

(1) (a) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the proceedings are in a court other than the district court in which the petition is filed, the district court shall notify that court of the filing of the petition.

(b) The district court in which the petition is filed:

(i) shall review the allegations of incompetency;

(ii) may hold a limited hearing solely for the purpose of determining the

sufficiency of the petition if the court finds the petition is not clearly sufficient on its face;

(iii) shall hold a hearing if the petition is opposed by either party;

(iv) may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial; and

(v) shall order an examination of the defendant and a hearing on the defendant's mental condition if the court finds that the allegations raise a bona fide doubt as to the defendant's competency to stand trial.

(2) (a) After the granting of a petition and prior to a full competency hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning the defendant's mental condition.

(b) The defendant shall be examined by at least two mental health experts not involved in the current treatment of the defendant.

(c) If the issue is sufficiently raised in the petition or if it becomes apparent that the defendant may be incompetent due to mental retardation, at least one expert experienced in mental retardation assessment shall evaluate the defendant. Upon appointment of the experts, the petitioner or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(d) The prosecuting and defense attorneys shall cooperate in providing the relevant information and materials to the examiners, and the court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its order for a competency examination of a defendant that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(3) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:

(a) the defendant's present capacity to:

(i) comprehend and appreciate the charges or allegations against the defendant;

(ii) disclose to counsel pertinent facts, events, and states of mind;

(iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;

(iv) engage in reasoned choice of legal strategies and options;

(v) understand the adversary nature of the proceedings against the defendant;

(vi) manifest appropriate courtroom behavior; and

(vii) testify relevantly, if applicable;

(b) the impact of the mental disorder, or mental retardation, if any, on the nature and quality of the defendant's relationship with counsel;

(c) if psychoactive medication is currently being administered:

(i) whether the medication is necessary to maintain the defendant's competency; and

(ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings; and

(d) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.

(5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:

(a) which of the above factors contributes to the defendant's incompetency;

(b) the nature of the defendant's mental disorder or mental retardation and its relationship to the factors contributing to the defendant's incompetency;

(c) the treatment or treatments appropriate and available;

(d) the defendant's capacity to give informed consent to treatment to restore competency; and

(e) any diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity.

(6) The experts examining the defendant shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by the experts shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by the expert based upon the statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) Prior to examining the defendant, examiners should specifically advise the

defendant of the limits of confidentiality as provided under Subsection (8)(a).

(9) (a) When the report is received the court shall set a date for a mental hearing. The hearing shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(b) Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. A conflict in the opinions of the experts does not require the appointment of an additional expert unless the court determines the appointment to be necessary.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

(10) (a) A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetency to proceed does not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(11) In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, which may include the testimony of lay witnesses, in addition to the expert testimony, studies, and reports provided under this section.

(12) (a) If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsections (4)(a) and (b). The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is committed or to the person who is responsible for assessing the defendant's progress toward competency shall be provided contemporaneously with the transportation and commitment order of the defendant, unless exigent circumstances require earlier commitment in which case the court shall forward the order within five working days of the order of transportation and commitment of the defendant.

(b) The order finding the defendant incompetent to stand trial shall be accompanied by:

(i) copies of the reports of the experts filed with the court pursuant to the order of examination if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant; and

(iii) any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition.

(13) (a) If the court finds it necessary to order the defendant transported prior to the completion of findings and compilation of documents required under Subsection (12), the transportation and commitment order delivering the defendant to the Utah State Hospital, or other mental health facility as directed by the executive director of the Department of Human Services or a designee, shall indicate that the defendant's commitment is based upon a finding of incompetency, and the mental health facility's copy of the order shall be accompanied by the reports of any experts filed with the court

pursuant to the order of examination.

(b) The executive director of the Department of Human Services or a designee may refuse to accept a defendant as a patient unless the defendant is accompanied by a transportation and commitment order which is accompanied by the reports.

(14) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for assessing the defendant's progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:

(a) copies of the charging document and supporting affidavits or other documents used in the determination of probable cause;

(b) arrest or incident reports prepared by a law enforcement agency pertaining to the charged offense; and

(c) information concerning the defendant's known criminal history.

(15) The court may make any reasonable order to insure compliance with this section.

(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Amended by Chapter 109, 2012 General Session
Amended by Chapter 311, 2012 General Session

77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.

(1) Except as provided in Subsection (5), if after hearing, the defendant is found to be incompetent to stand trial, the court shall order the defendant committed to the custody of the executive director of the Department of Human Services or a designee for the purpose of treatment intended to restore the defendant to competency. The court may recommend but not order placement of the defendant. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. The director or a designee shall designate the specific placement of the defendant during the period of evaluation and treatment to restore competency.

(2) The examiner or examiners designated by the executive director to assess the defendant's progress toward competency may not be involved in the routine treatment of the defendant. The examiner or examiners shall provide a full report to the court and prosecuting and defense attorneys within 90 days of arrival of the defendant at the treating facility. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner shall have up to an additional 90 days to provide the full report. The full report shall assess:

(a) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms, and shall report:

(i) any diagnostic instruments, methods, and observations used by the examiner to make the determination; and

(ii) the examiner's opinion as to the effect of any false or exaggerated symptoms

on the defendant's capacity to stand trial;

(b) the facility's or program's capacity to provide appropriate treatment for the defendant;

(c) the nature of treatments provided to the defendant;

(d) what progress toward competency restoration has been made with respect to the factors identified by the court in its initial order;

(e) the defendant's current level of mental disorder or mental retardation and need for treatment, if any; and

(f) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party or by the executive director may appoint additional mental health examiners to examine the defendant and advise the court on the defendant's current mental status and progress toward competency restoration.

(4) Upon receipt of the full report, the court shall hold a hearing to determine the defendant's current status. At the hearing, the burden of proving that the defendant is competent is on the proponent of competency. Following the hearing, the court shall determine by a preponderance of evidence whether the defendant is:

(a) competent to stand trial;

(b) incompetent to stand trial with a substantial probability that the defendant may become competent in the foreseeable future; or

(c) incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future.

(5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall proceed with the trial or other procedures as may be necessary to adjudicate the charges.

(b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that the defendant remain committed to the custody of the executive director of the Department of Human Services or a designee for the purpose of treatment intended to restore the defendant to competency.

(c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the defendant released from the custody of the director unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings must be initiated within seven days after the court's order entering the finding in Subsection (4)(c), unless the court enlarges the time for good cause shown. The defendant may be ordered to remain in the custody of the director until commitment proceedings have been concluded. If the defendant is committed, the court which entered the order pursuant to Subsection (4)(c), shall be notified by the director at least 10 days prior to any release of the committed person.

(6) If the defendant is recommitted to the department pursuant to Subsection (5)(b), the court shall hold a hearing one year following the recommitment.

(7) At the hearing held pursuant to Subsection (6), except for defendants charged with the crimes listed in Subsection (8), a defendant who has not been restored to competency shall be ordered released or temporarily detained pending civil

commitment proceedings under the same terms as provided in Subsection (5)(c).

(8) If the defendant has been charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (6), the court may order the defendant recommitted for a period not to exceed 18 months for the purpose of treatment to restore the defendant to competency with a mandatory review hearing at the end of the 18-month period.

(9) Except for defendants charged with aggravated murder or murder, a defendant who has not been restored to competency at the time of the hearing held pursuant to Subsection (8) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(10) If the defendant has been charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the mandatory review hearing held pursuant to Subsection (8), the court may order the defendant recommitted for a period not to exceed 36 months for the purpose of treatment to restore competency.

(11) If the defendant is recommitted to the department pursuant to Subsection (10), the court shall hold a hearing no later than at 18-month intervals following the recommitment for the purpose of determining the defendant's competency status.

(12) A defendant who has not been restored to competency at the expiration of the additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(13) (a) In no event may the maximum period of detention under this section exceed the maximum period of incarceration which the defendant could receive if the defendant were convicted of the charged offense.

(b) This Subsection (13) does not preclude pursuing involuntary civil commitment nor does it place any time limit on civil commitments.

(14) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews to assess the defendant's competency to stand trial.

(15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, may still be adjudicated competent to stand trial under this chapter.

(16) (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

(b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9), (12), or (13) is not dismissal of the criminal charges.

(17) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.

(18) At any time that the defendant becomes competent to stand trial, the

clinical director of the hospital or other facility or the executive director of the Department of Human Services shall certify that fact to the court. The court shall conduct a hearing within 15 working days of the receipt of the clinical director's or executive director's report, unless the court enlarges the time for good cause.

(19) The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the executive director of the Department of Human Services.

(20) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

Amended by Chapter 109, 2012 General Session

77-15-6.5. Petition for involuntary medication of incompetent defendant.

(1) As used in this section:

(a) "Executive director" means the executive director of the Department of Human Services or the executive director's designee.

(b) "Final order" means a court order that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(2) (a) At any time after a defendant has been found incompetent to proceed and has been committed to the Department of Human Services under Section 77-15-6 for treatment to restore competency, the executive director shall notify the court, prosecuting attorney, and attorney for the defendant if the executive director has determined that the defendant is not responding to treatment and is unlikely to be restored to competency without the involuntary administration of antipsychotic medication.

(b) The executive director shall provide the notification under Subsection (2)(a) only if there is no basis for involuntarily medicating the defendant for reasons other than to restore the defendant's competency.

(3) In the notice under Subsection (2)(a), the executive director shall state whether the executive director believes:

(a) medication is necessary to render the defendant competent;

(b) medication is substantially likely to render the defendant competent;

(c) medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in his defense;

(d) no less intrusive means are available, and whether any of those means have been attempted to render the defendant competent; and

(e) medication is medically appropriate and is in the defendant's best medical interest in light of his medical condition.

(4) (a) Upon receipt of the notice under Subsection (2)(a), the court shall conduct a hearing within 30 days, unless the court extends the time for good cause, to determine whether the court should convene a hearing regarding the involuntary medication of the defendant.

(b) The prosecuting attorney shall represent the state at any hearing under this section.

(c) The court shall consider whether the following factors apply in determining whether the defendant should be involuntarily medicated:

(i) important state interests are at stake in restoring the defendant's competency;

(ii) involuntary medication will significantly further the important state interests, in that the medication proposed:

(A) is substantially likely to render the defendant competent to stand trial; and

(B) is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist the defense counsel in conducting his defense;

(iii) involuntary medication is necessary to further important state interests, because any alternate less intrusive treatments are unlikely to achieve substantially the same results; and

(iv) the administration of the proposed medication is medically appropriate, as it is in the defendant's best medical interest in light of his medical condition.

(5) In determining whether the proposed treatment is medically appropriate and is in the defendant's best medical interest, the potential penalty the defendant may be subject to, if the defendant is convicted of any charged offense, is not a relevant consideration.

(6) (a) If the court finds by clear and convincing evidence that the involuntary administration of antipsychotic medication is appropriate, it shall make findings addressing each of the factors in Subsection (4)(c) and shall issue an order authorizing the Department of Human Services to involuntarily administer antipsychotic medication to the defendant in order to restore his competency, subject to the periodic reviews and other procedures provided in Section 77-15-6.

(b) When issuing an order under Subsection (6)(a), the court shall consider ordering less intrusive means for administering the drugs, such as a court order to the defendant enforceable by the contempt power, before ordering more intrusive methods of involuntary medication.

(7) The provisions in Section 77-15-6 establishing time limitations for treatment of incompetent defendants before they must be either released or civilly committed are tolled from the time the executive director gives notice to the court and the parties under Subsection (2) until:

(a) the court has issued a final order for the involuntary medication of the defendant, and the defendant has been medicated under that order; or

(b) the court has issued a final order that the defendant will not be involuntarily medicated.

(8) This section applies only when the prosecution seeks an order of involuntary medication solely for the purpose of rendering a defendant competent to proceed.

Amended by Chapter 212, 2008 General Session

77-15-7. Statute of limitations and speedy trial -- Effect of incompetency of defendant.

(1) The statute of limitations is tolled during any period in which the defendant is adjudicated incompetent to proceed.

(2) Any period of time during which the defendant has been adjudicated incompetent and any period during which he is being evaluated for competency may not be computed in determining the defendant's speedy trial rights.

Repealed and Re-enacted by Chapter 162, 1994 General Session

77-15-8. Bail exonerated on commitment of defendant.

When a defendant awaiting trial is committed to a mental health facility, bail shall be exonerated.

Enacted by Chapter 15, 1980 General Session

77-15-9. Expenses.

(1) In determining the competence of a defendant to proceed, expenses of examination, observation, or treatment, excluding travel to and from any mental health facility, shall be charged to the Department of Human Services when the offense is a state offense. Travel expenses incurred by the defendant shall be charged to the county where prosecution is commenced. Examination of defendants on local ordinance violations shall be charged by the department to the municipality or county commencing the prosecution.

(2) When examination is initiated by the court or on motion of the prosecutor, expenses of commitment and treatment of the person confined to a mental health facility after examination, if he is determined to be incompetent to proceed, shall also be charged to the department.

(3) Expenses of examination, treatment, or confinement in a mental health facility for any person who has been convicted of a crime and placed in a state correctional facility shall be charged to the Department of Corrections.

(4) If the defendant, after examination, is found to be competent by the court, all subsequent costs are charged to the county commencing prosecution. If the defendant requested the examination and is found to be competent by the court, the department may recover the expenses of the examination from the defendant.

Amended by Chapter 162, 1994 General Session

77-15a-101. Mentally retarded defendant not subject to death penalty -- Defendant with subaverage functioning not subject to death penalty if confession not corroborated.

(1) A defendant who is found by the court to be mentally retarded as defined in Section 77-15a-102 is not subject to the death penalty.

(2) A defendant who does not meet the definition of mental retardation under Section 77-15a-102 is not subject to the death penalty if:

(a) the defendant has significantly subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning;

(b) the functioning described in Subsection (2)(a) is manifested prior to age 22; and

(c) the state intends to introduce into evidence a confession by the defendant

which is not supported by substantial evidence independent of the confession.

Enacted by Chapter 11, 2003 General Session

77-15a-102. "Mentally retarded" defined.

As used in this chapter, a defendant is "mentally retarded" if:

(1) the defendant has significant subaverage general intellectual functioning that results in and exists concurrently with significant deficiencies in adaptive functioning that exist primarily in the areas of reasoning or impulse control, or in both of these areas; and

(2) the subaverage general intellectual functioning and the significant deficiencies in adaptive functioning under Subsection (1) are both manifested prior to age 22.

Enacted by Chapter 11, 2003 General Session

77-15a-103. Court may raise issue of mental retardation at any time.

The court in which a capital charge is pending may raise the issue of the defendant's mental retardation at any time. If raised by the court, counsel for each party shall be allowed to address the issue of mental retardation.

Enacted by Chapter 11, 2003 General Session

77-15a-104. Hearing -- Notice -- Stay of proceeding -- Examinations of defendant -- Scope of examination -- Report -- Procedures.

(1) (a) If a defendant proposes to offer evidence concerning or argue that he qualifies for an exemption from the death penalty under Subsection 77-15a-101(1) or (2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(b) If the defendant wishes to claim the exemption provided in Subsection 77-15a-101(2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(2) When notice is given under Subsection (1), the court raises the issue, or a motion is filed regarding Section 77-15a-101, the court may stay all proceedings in order to address the issue.

(3) (a) The court shall order the Department of Human Services to appoint at least two mental health experts to examine the defendant and report to the court. The experts:

(i) may not be involved in the current treatment of the defendant; and

(ii) shall have expertise in mental retardation assessment.

(b) Upon appointment of the experts, the defendant or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's mental retardation, including copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) The court may make the necessary orders to provide the information listed in

Subsection (3)(b) to the examiners.

(d) The court may provide in its order appointing the examiners that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(e) Prior to examining the defendant, examiners shall specifically advise the defendant of the limits of confidentiality as provided under Section 77-15a-106.

(4) During any examinations under Subsection (3), unless the court directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(5) The experts shall in the conduct of their examinations and in their reports to the court consider and address:

(a) whether the defendant is mentally retarded as defined in Section 77-15a-102;

(b) the degree of any mental retardation the expert finds to exist;

(c) whether the defendant has the mental deficiencies specified in Subsection 77-15a-101(2); and

(d) the degree of any mental deficiencies the expert finds to exist.

(6) (a) The experts examining the defendant shall provide written reports to the court, the prosecution, and the defense within 60 days of the receipt of the court's order, unless the expert submits to the court a written request for additional time in accordance with Subsection (6)(c).

(b) The reports shall provide to the court and to prosecution and defense counsel the examiners' written opinions concerning the mental retardation of the defendant.

(c) If an examiner requests of the court additional time, the examiner shall provide the report to the court and counsel within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by an expert shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the expert's clinical observations, findings, and opinions; and

(d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) Within 30 days after receipt of the report from the Department of Human Services, but not later than five days before hearing, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of witnesses the prosecuting attorney proposes to call in rebuttal.

(9) (a) Except pursuant to Section 77-15a-105, this chapter does not prevent any party from producing any other testimony as to the mental condition of the defendant.

(b) Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (10).

(10) (a) Expenses of examinations of the defendant ordered by the court under this section shall be paid by the Department of Human Services.

(b) Travel expenses associated with any court-ordered examination that are incurred by the defendant shall be charged by the Department of Human Services to the county where prosecution is commenced.

(11) (a) When the report is received, the court shall set a date for a hearing to determine if the exemption under Section 77-15a-101 applies. The hearing shall be held and the judge shall make the determination within a reasonable time prior to jury selection.

(b) Prosecution and defense counsel may subpoena to testify at the hearing any person or organization appointed by the Department of Human Services to conduct the examination and any independent examiner.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine that examiner.

(12) (a) A defendant is presumed to be not mentally retarded unless the court, by a preponderance of the evidence, finds the defendant to be mentally retarded. The burden of proof is upon the proponent of mental retardation at the hearing.

(b) A finding of mental retardation does not operate as an adjudication of mental retardation for any purpose other than exempting the person from a sentence of death in the case before the court.

(13) (a) The defendant is presumed not to possess the mental deficiencies listed in Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22. The burden of proof is upon the proponent of that proposition.

(b) If the court finds by a preponderance of the evidence that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22, then the burden is upon the state to establish that any confession by the defendant which the state intends to introduce into evidence is supported by substantial evidence independent of the confession.

(14) (a) If the court finds the defendant mentally retarded, it shall issue an order:

(i) containing findings of fact and conclusions of law, and addressing each of the factors in Subsections (5)(a) and (b); and

(ii) stating that the death penalty is not a sentencing option in the case before the court.

(b) If the court finds by a preponderance of the evidence that the defendant possesses the mental deficiencies listed in Subsection 77-15a-101(2) and that the state fails to establish that any confession is supported by substantial evidence independent of the confession, the state may proceed with its case and:

(i) introduce the confession into evidence, and the death penalty will not be a sentencing option in the case; or

(ii) not introduce into evidence any confession or the fruits of a confession that the court has found is not supported by substantial evidence independent of the confession, and the death penalty will be a sentencing option in the case.

(c) (i) A finding by the court regarding whether the defendant qualifies for an

exemption under Section 77-15a-101 is a final determination of that issue for purposes of this chapter.

(ii) The following questions may not be submitted to the jury by instruction, special verdict, argument, or other means:

(A) whether the defendant is mentally retarded for purposes of this chapter; and

(B) whether the defendant possesses the mental deficiencies specified in Subsection 77-15a-101(2).

(iii) This chapter does not prevent the defendant from submitting evidence of retardation or other mental deficiency to establish a mental condition as a mitigating circumstance under Section 76-3-207.

(15) A ruling by the court that the defendant is exempt from the death penalty may be appealed by the state pursuant to Subsection 77-18a-1(2)(h).

(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Enacted by Chapter 11, 2003 General Session

77-15a-105. Defendant's wilful failure to cooperate -- Expert testimony regarding retardation is barred.

(1) If the defendant files notice, raises the issue, or intends to present evidence or make an argument that the defendant is exempt from the death penalty under this chapter, the defendant shall make himself available and fully cooperate in any examination by mental health experts appointed by the Department of Human Services and any other independent examiners for the defense or the prosecution.

(2) If the defendant wilfully fails to make himself available and fully cooperate in the examination, and that failure is established to the satisfaction of the court, the defendant is barred from presenting expert testimony relating to any exemption from the death penalty under this chapter.

Enacted by Chapter 11, 2003 General Session

77-15a-106. Limitations on admitting mental retardation examination evidence.

(1) The following may not be admitted into evidence against the defendant in any criminal proceeding, except as provided in Subsection (2):

(a) any statement made by the defendant in the course of any mental examination conducted under this chapter, whether the examination is with or without the consent of the defendant, and any testimony by the expert based upon the defendant's statement; and

(b) any other fruits of the defendant's statement under Subsection (1)(a).

(2) Evidence under Subsection (1) may be admitted on an issue regarding a mental condition on which the defendant has introduced evidence.

Enacted by Chapter 11, 2003 General Session

77-16a-101. Definitions.

As used in this chapter:

(1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

(2) "Department" means the Department of Human Services.

(3) "Executive director" means the executive director of the Department of Human Services.

(4) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

(5) "Mental illness" is as defined in Section 76-2-305.

(6) "Offender with a mental illness" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability.

(7) "UDC" means the Department of Corrections.

Amended by Chapter 366, 2011 General Session

77-16a-102. Jury instructions.

(1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall instruct the jury that it may find the defendant:

(a) guilty;

(b) guilty with a mental illness at the time of the offense;

(c) guilty of a lesser offense;

(d) guilty of a lesser offense with a mental illness at the time of the offense;

(e) not guilty by reason of insanity; or

(f) not guilty.

(2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts special mitigation reducing the level of an offense pursuant to Subsection 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction, the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser included offense, it shall also return a special verdict indicating whether it finds that the defendant had a mental illness at the time of the offense.

(b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty with a mental illness at the time of the offense."

(c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense with a mental illness at the time of the offense."

(d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant had a mental illness at the time of the offense, the jury shall return a verdict of "guilty" of that offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental illness at the time of the offense.

(e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

(3) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the jury shall be instructed that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall also be instructed that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of any offense must be proven beyond a reasonable doubt.

(4) (a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return a special verdict.

(b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

Amended by Chapter 366, 2011 General Session

77-16a-103. Plea of guilty with a mental illness at the time of the offense.

(1) Upon a plea of guilty with a mental illness at the time of the offense being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant currently has a mental illness.

(2) The court may order the department to examine the defendant, and may receive the testimony of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval by the executive director.

(3) (a) A defendant who tenders a plea of guilty with a mental illness at the time of the offense shall be examined first by the trial judge, in compliance with the standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.

(b) If the defendant is later found not to have a current mental illness, that plea remains a valid plea of guilty with a mental illness at the time of the offense, and the defendant shall be sentenced as any other offender.

(4) If the court concludes that the defendant currently has a mental illness, the defendant's plea shall be accepted and the defendant shall be sentenced in accordance with Section 77-16a-104.

(5) (a) When the offense is a state offense, expenses of examination, observation, and treatment for the defendant shall be paid by the department.

(b) Travel expenses shall be paid by the county where prosecution is commenced.

(c) Expenses of examination for defendants charged with violation of a municipal or county ordinance shall be paid by the municipality or county that commenced the prosecution.

Amended by Chapter 366, 2011 General Session

77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine present mental state.

(1) Upon a verdict of guilty with a mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.

(2) The court may order the department to examine the defendant to determine the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval of the executive director.

(3) If the court finds by clear and convincing evidence that the defendant currently has a mental illness, the court shall impose any sentence that could be imposed under law upon a defendant who does not have a mental illness and who is convicted of the same offense, and:

(a) commit the defendant to the department, in accordance with the provisions of Section 77-16a-202, if:

(i) the court gives the department the opportunity to provide an evaluation and recommendation under Subsection (4); and

(ii) the court finds by clear and convincing evidence that:

(A) because of the defendant's mental illness the defendant poses an immediate physical danger to self or others, including jeopardizing the defendant's own or others' safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and

(B) the department is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions and needs;

(b) order probation in accordance with Section 77-16a-201; or

(c) if the court determines that commitment to the department under Subsection (3)(a) or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in the custody of UDC or a county jail as allowed by law.

(4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall, before making a determination, notify the executive director of the proposed placement and provide the department with an opportunity to evaluate the defendant and make a recommendation to the court regarding placement prior to commitment.

(5) If the court finds that the defendant does not currently have a mental illness, the court shall sentence the defendant as it would any other defendant.

(6) Expenses for examinations ordered under this section shall be paid in accordance with Subsection 77-16a-103(5).

Amended by Chapter 366, 2011 General Session

77-16a-201. Probation.

(1) (a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty with a mental illness at the time of the offense, it shall request UDC to provide a presentence investigation report regarding

whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place an offender who has been convicted of the felony offenses listed in Section 76-3-406 on probation, regardless of whether the offender has, or had, a mental illness.

(2) The period of probation for a felony offense committed by a person who has been found guilty with a mental illness at the time of the offense may be for no less than five years. Probation for those offenders may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3) (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.

(5) The court may not release an offender with a mental illness into the community, as a part of probation, if it finds by clear and convincing evidence that the offender:

(a) poses an immediate physical danger to self or others, including jeopardizing the offender's own or others' safety, health, or welfare if released into the community; or

(b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.

(6) An offender with a mental illness who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Amended by Chapter 366, 2011 General Session

77-16a-202. Person found guilty with a mental illness -- Commitment to department -- Admission to Utah State Hospital.

(1) In sentencing and committing an offender with a mental illness to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) sentence the offender to a term of imprisonment and order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental illness who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

77-16a-203. Review of offenders with a mental illness committed to department -- Recommendations for transfer to Department of Corrections.

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 62A-5-101.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

(i) current mental condition;

(ii) progress since commitment; and

(iii) prognosis; and

(b) that includes a recommendation regarding whether the offender with a mental illness should be:

(i) transferred to UDC; or

(ii) remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that an offender with a mental illness is eligible for transfer to UDC if the review team finds that the offender:

(i) no longer has a mental illness; or

(ii) has a mental illness and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

(i) all available clinical facts;

(ii) the diagnosis;

(iii) the course of treatment received at the mental health facility;

(iv) the prognosis for remission of symptoms;

(v) the potential for recidivism;

(vi) an estimation of the offender's dangerousness, either to self or others; and

(vii) recommendations for future treatment.

Amended by Chapter 366, 2011 General Session

77-16a-204. UDC acceptance of transfer of persons found guilty with a mental illness -- Retransfer from UDC to department for admission to the Utah State Hospital.

(1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender has an intellectual disability, the transfer team shall include at least one person who has expertise in testing and diagnosis of people with intellectual disabilities.

(2) The transfer team shall concur in the recommendation if the transfer team determines that UDC can provide the offender with a mental illness with adequate mental health treatment.

(3) The UDC transfer team and medical administrator shall recommend the facility in which the offender should be placed and the treatment to be provided in order for the offender's mental condition to remain stabilized to the director of the Division of Institutional Operations, within the Department of Corrections.

(4) In the event that the department and UDC do not agree on the transfer of an offender with a mental illness, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The board's mental health adviser shall make a recommendation to

the board on the transfer and the board shall issue its decision within 30 days.

(5) UDC shall notify the board whenever an offender with a mental illness is transferred from the department to UDC.

(6) When an offender with a mental illness sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.

(7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

(8) An offender with a mental illness who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.

Amended by Chapter 366, 2011 General Session

77-16a-205. Parole.

(1) When an offender with a mental illness who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.

(2) Before setting a parole date, the board shall request that its mental health adviser prepare a report regarding the offender with a mental illness, including:

(a) all available clinical facts;

(b) the diagnosis;

(c) the course of treatment received at the mental health facility;

(d) the prognosis for remission of symptoms;

(e) potential for recidivism;

(f) an estimation of the dangerousness of the offender with a mental illness either to self or others; and

(g) recommendations for future treatment.

(3) Based on the report described in Subsection (2), the board may place the offender with a mental illness on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.

(4) UDC, through Adult Probation and Parole, shall monitor the status of an offender with a mental illness who has been placed on parole. UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.

(5) The period of parole may be no less than five years, or until expiration of the defendant's sentence, whichever occurs first. The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

Amended by Chapter 366, 2011 General Session

77-16a-301. Mental examination of defendant

(1) (a) When the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, or that the defendant intends to assert special mitigation under Subsection 76-5-205.5(1)(a), the court shall order the Department of Human Services to examine the defendant and investigate the defendant's mental condition.

(b) The person or organization directed by the department to conduct the examination shall testify at the request of the court or either party in any proceeding in which the testimony is otherwise admissible.

(c) Pending trial, unless the court or the executive director directs otherwise, the defendant shall be retained in the same custody or status the defendant was in at the time the examination was ordered.

(2) (a) The defendant shall be available and shall fully cooperate in the examination by the department and any other independent examiners for the defense and the prosecuting attorney.

(b) If the defendant fails to be available and to fully cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant is barred from presenting expert testimony relating to the defendant's defense of mental illness at the trial of the case.

(c) The department shall complete the examination within 30 days after the court's order, and shall prepare and provide to the court prosecutor and defense counsel a written report concerning the condition of the defendant.

(3) Within 10 days after receipt of the report from the department, but not later than five days before the trial of the case, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of mental illness, which shall contain the names of witnesses the prosecuting attorney proposes to call in rebuttal.

(4) The reports of any other independent examiner are admissible as evidence upon stipulation of the prosecution and defense.

(5) This section does not prevent any party from producing any other testimony as to the mental condition of the defendant. Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (7).

(6) This section does not require the admission of evidence not otherwise admissible.

(7) Expenses of examination ordered by the court under this section shall be paid by the Department of Human Services. Travel expenses associated with the examination incurred by the defendant shall be charged by the department to the county where prosecution is commenced. Examination of defendants charged with violation of municipal or county ordinances shall be charged by the department to the entity commencing the prosecution.

Amended by Chapter 206, 2009 General Session

77-16a-302. Persons found not guilty by reason of insanity -- Disposition.

(1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days to determine whether the defendant currently has a mental illness. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

(2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:

(a) the defendant has a mental illness; and

(b) because of that mental illness the defendant presents a substantial danger to self or others.

(3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had the defendant been convicted and received the maximum sentence for the crime of which the defendant was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

77-16a-303. Court determinations.

After entry of judgment of not guilty by reason of insanity, the court shall:

(1) determine on the record the offense of which the person otherwise would have been convicted and the maximum sentence he could have received; and

(2) make specific findings regarding whether there is a victim of the crime for which the defendant has been found not guilty by reason of insanity and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.

Enacted by Chapter 171, 1992 General Session

77-16a-304. Review after commitment.

(1) (a) The executive director, or the executive director's designee, shall establish a review team of at least three qualified staff members to review the defendant's mental condition at least every six months.

(b) The team described in Subsection (1)(a) shall include:

(i) at least one psychiatrist; and

(ii) if the defendant has an intellectual disability, at least one staff member who is a designated intellectual disability professional.

(2) If the review team described in Subsection (1) finds that the defendant has recovered from the defendant's mental illness, or, that the defendant still has a mental illness but does not present a substantial danger to self or others, the executive director, or the executive director's designee, shall:

(a) notify the court that committed the defendant that the defendant is a candidate for discharge; and

(b) provide the court with a report stating the facts that form the basis for the

recommendation.

(3) (a) The court shall conduct a hearing within 10 business days after receipt of the executive director's, or the executive director's designee's, notification.

(b) The court clerk shall provide notice of the date and time of the hearing to:

(i) the prosecuting attorney;

(ii) the defendant's attorney; and

(iii) any victim of the crime for which the defendant was found not guilty by reason of insanity.

(4) (a) The court shall order that the defendant be discharged from commitment if the court finds that the defendant:

(i) no longer has a mental illness; or

(ii) has a mental illness, but no longer presents a substantial danger to self or others.

(b) The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:

(i) has a mental illness;

(ii) is a substantial danger to self or others; and

(iii) can be controlled adequately if conditionally released with treatment as a condition of release.

(c) The court shall order that the commitment be continued if the court finds that the defendant:

(i) has not recovered from the defendant's mental illness;

(ii) is a substantial danger to self or others; and

(iii) cannot adequately be controlled if conditionally released on supervision.

(d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a defendant whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to self or others.

(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

Amended by Chapter 366, 2011 General Session

77-16a-305. Conditional release.

(1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that his mental illness and dangerousness can be controlled with proper care, medication, supervision, and treatment if he is conditionally released, the review team shall prepare a report and notify the executive director, or his designee, that the defendant is a candidate for conditional release.

(2) The executive director, or his designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.

(3) The executive director, or his designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by

the review team under Subsection (1), and the conditional release plan. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.

(4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to himself or others, he can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.

(5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.

Amended by Chapter 285, 1993 General Session

77-16a-306. Continuing review -- Discharge.

(1) Each entity that provides treatment for a defendant committed to the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every six months. If the treatment provider finds that a defendant has recovered from the defendant's mental illness, or, if the defendant has a mental illness, no longer presents a substantial danger to self or others, it shall notify the executive director of its findings.

(2) Upon receipt of notification under Subsection (1), the executive director shall designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If that review team concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a candidate for discharge. The court shall conduct a hearing, in accordance with Section 77-16a-302, within 10 business days after receipt of that notice.

(3) The court may not discharge an individual whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to self or others.

Amended by Chapter 366, 2011 General Session

77-16b-101. Title.

This chapter is known as the "Involuntary Feeding and Hydration of Inmates."

Enacted by Chapter 355, 2012 General Session

77-16b-102. Definitions.

As used in this chapter:

(1) "Correctional facility" means:

(a) a county jail;

(b) a secure correctional facility as defined by Section 64-13-1; or

(c) a secure facility as defined by Section 62A-7-101.

(2) "Correctional facility administrator" means:

(a) a county sheriff in charge of a county jail;

(b) a designee of the executive director of the Utah Department of Corrections; or

(c) a designee of the director of the Division of Juvenile Justice Services.

(3) "Medical supervision" means under the direction of a licensed physician, physician assistant, or nurse practitioner.

(4) "Mental health therapist" has the same definition as in Section 58-60-102.

(5) "Prisoner" means:

(a) any person who is a pretrial detainee or who has been committed to the custody of a sheriff or the Utah Department of Corrections, and who is physically in a correctional facility; and

(b) any person older than 18 years of age and younger than 21 years of age who has been committed to the custody of the Division of Juvenile Justice Services.

Amended by Chapter 121, 2014 General Session

77-16b-103. Involuntary feeding or hydration of prisoners -- Petition procedures, venue -- Prisoner rights.

(1) A correctional facility administrator may petition the district court where the correctional facility is located for an order permitting the involuntary feeding or hydration of any prisoner who is likely to suffer severe harm or death by refusing to accept sufficient nutrition or hydration.

(2) Prior to the filing of a petition under this section, a mental health therapist who is designated by the correctional facility administrator shall conduct a mental health evaluation of the subject prisoner.

(3) Upon the filing of a petition, the district court shall hold a hearing within two working days. The court:

(a) shall confidentially review the prisoner's medical and mental health records as they are available;

(b) may hear testimony or receive evidence, subject to the Utah Rules of Evidence, concerning the circumstances of the prisoner's lack of nutrition or hydration; and

(c) may exclude from the hearing any person whose presence is not necessary for the purposes of the hearing, due to the introduction of personal medical and mental health evidence.

(4) After conducting the hearing under Subsection (3), the district court shall issue an order to involuntarily feed or hydrate the prisoner, if the court finds by a preponderance of evidence that:

(a) (i) the prisoner is likely to suffer severe harm or death by refusing to accept sufficient nutrition or hydration; and

(ii) the correctional facility's medical or penological objectives are valid and outweigh the prisoner's right to refuse treatment; or

(b) the prisoner is refusing sufficient nutrition or hydration with the intent to obstruct or delay any judicial or administrative proceeding pending against the prisoner.

(5) The district court shall state its findings of fact and conclusions of law on the

record.

(6) The correctional facility administrator shall serve copies of the petition and a notice of the district court hearing on the prisoner and the prisoner's counsel, if the prisoner is represented by counsel, at least 24 hours in advance of the hearing under Subsection (3).

(7) The prisoner has the right to attend the hearing, testify, present evidence, and cross-examine witnesses.

Enacted by Chapter 355, 2012 General Session

77-16b-104. Involuntary feeding or hydration of prisoners -- Standards, continuing jurisdiction, and records.

(1) Any involuntary nutrition or hydration of a prisoner pursuant to this chapter shall be conducted under immediate medical supervision and in a medically recognized and acceptable manner.

(2) Upon the filing of a petition pursuant to Section 77-16b-102, the court has the continuing jurisdiction to review the prisoner's need for involuntary nutrition or hydration as long as the prisoner remains in custody of the correctional facility.

(3) A correctional facility shall maintain records of any involuntary feeding or hydration of prisoners under this chapter.

(a) The records are classified as "controlled" under Section 63G-2-304.

(b) All medical or mental health records submitted to the court under this chapter shall be kept under seal.

Enacted by Chapter 355, 2012 General Session

Section 5. Section **77-16b-105** is enacted to read:

77-16b-105. Involuntary feeding or hydration of prisoners -- Exceptions.

This chapter does not apply to medically imposed fasts for the purpose of conducting medical procedures or tests, or to religious fasts of reasonable duration.

Enacted by Chapter 355, 2012 General Session

77-17-1. Doubt as to degree -- Conviction only on lowest.

When it appears the defendant has committed a public offense and there is reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lower degree.

Enacted by Chapter 15, 1980 General Session

77-17-2. Discharging one of several defendants -- To testify for state.

When two or more persons are included in the same charge, the court may at any time, on the application of the prosecuting attorney, direct any defendant to be discharged or his case severed so that he may be a witness for the prosecution.

Enacted by Chapter 15, 1980 General Session

77-17-3. Discharge for insufficient evidence.

When it appears to the court that there is not sufficient evidence to put a defendant to his defense, it shall forthwith order him discharged.

Enacted by Chapter 15, 1980 General Session

77-17-4. Conspiracy -- Pleading -- Evidence -- Proof necessary.

On a trial for conspiracy in a case where an overt act is necessary to constitute the offense, the defendant shall not be convicted unless one or more overt acts are expressly alleged in the information or indictment, and unless one of the acts alleged has been proved. However, proof of overt acts not alleged may be given in evidence.

Enacted by Chapter 15, 1980 General Session

77-17-5. Proof of corporate existence or powers generally.

In a criminal case the existence, constitution or powers of any corporation may be proved by general reputation, or by the printed statutes of the state, government or country by which this corporation was created.

Enacted by Chapter 15, 1980 General Session

77-17-6. Lottery tickets -- Evidence.

(1) On a trial for violation of any of the lottery provisions of the Utah Criminal Code, it is not necessary to prove:

(a) The existence of any lottery in which any lottery tickets shall purport to have been issued;

(b) The actual signing of any ticket or share, or pretended share of any pretended lottery; or

(c) That any lottery ticket, share or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager.

(2) In all cases, proof of the sale, furnishing, bartering or procuring of any lottery ticket, share or interest therein, or of any instrument purporting to be a ticket, or part or share of any ticket shall be evidence that the share or interest was signed and issued according to its purport.

Enacted by Chapter 15, 1980 General Session

77-17-7. Conviction on testimony of accomplice -- Instruction to jury.

(1) A conviction may be had on the uncorroborated testimony of an accomplice.

(2) In the discretion of the court, an instruction to the jury may be given to the effect that such uncorroborated testimony should be viewed with caution, and such an instruction shall be given if the trial judge finds the testimony of the accomplice to be self contradictory, uncertain or improbable.

Enacted by Chapter 15, 1980 General Session

77-17-8. Mistake in charging offense -- Procedure -- Witnesses.

If at any time before verdict or judgment a mistake has been made in charging the proper offense, and it appears that there is probable cause to believe that the defendant is chargeable with another offense, the court may commit him or require him to give bail under Section 77-20-1 for his appearance to answer to the proper charge when filed, and may also require witnesses to give bail for their appearance.

Amended by Chapter 4, 1988 Special Session 2

77-17-9. Separation or sequestration of jurors -- Oath of officer having custody.

(1) The court, at any time before the submission of the case to the jury, may permit the jury to separate or order that it be sequestered in charge of a proper officer.

(2) If the jury is sequestered the officer shall be sworn to keep the jurors together until the next meeting of the court, to prevent any person from speaking or communicating with them, and not to do so himself on any subject connected with the trial, and to return the jury to the court pursuant to its order.

Enacted by Chapter 15, 1980 General Session

77-17-10. Court to determine law; the jury, the facts.

(1) In a jury trial, questions of law are to be determined by the court, questions of fact by the jury.

(2) The jury may find a general verdict which includes questions of law as well as fact but they are bound to follow the law as stated by the court.

Enacted by Chapter 15, 1980 General Session

77-17-11. Jury to retire for deliberation -- Oath of officer having custody.

After hearing the court's instructions and arguments of counsel, the jury shall retire for deliberation. An officer shall be sworn to keep them together in some private and convenient place and not permit any person to speak to or communicate with them or to do so himself except upon the order of the court, or to ask them whether they have agreed on a verdict. He shall return them to court when they have agreed and the court has so ordered, or when otherwise ordered by the court.

Enacted by Chapter 15, 1980 General Session

77-17-12. Defendant on bail appearing for trial may be committed.

When a defendant who has given bail appears for trial, the court may, at any time after his appearance for trial, order him to be committed to the custody of the proper officer to await the judgment or further order of the court.

Enacted by Chapter 15, 1980 General Session

77-17-13. Expert testimony generally -- Notice requirements.

(1) (a) If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before the hearing.

(b) Notice shall include the name and address of the expert, the expert's curriculum vitae, and one of the following:

(i) a copy of the expert's report, if one exists; or

(ii) a written explanation of the expert's proposed testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony; and

(iii) a notice that the expert is available to cooperatively consult with the opposing party on reasonable notice.

(c) The party intending to call the expert is responsible for any fee charged by the expert for the consultation.

(2) If an expert's anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request.

(3) As soon as practicable after receipt of the expert's report or the information concerning the expert's proposed testimony, the party receiving notice shall provide to the other party notice of witnesses whom the party anticipates calling to rebut the expert's testimony, including the information required under Subsection (1)(b).

(4) (a) If the defendant or the prosecution fails to substantially comply with the requirements of this section, the opposing party shall, if necessary to prevent substantial prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony.

(b) If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy of exclusion of the expert's testimony will only apply if the court finds that a party deliberately violated the provisions of this section.

(5) (a) For purposes of this section, testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing.

(b) Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.

(6) This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.

Amended by Chapter 290, 2003 General Session

77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include:

(i) a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family;

(ii) a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

(iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1;

(iv) recommendations for treatment of the offender; and

(v) the number of days since the commission of the offense that the offender has spent in the custody of the jail and the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

(c) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support the defendant is legally liable;

(iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the

court;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable. If the court retains jurisdiction for this limited purpose, the court may order the defendant to pay to the court the costs associated with continued probation under this Subsection (10).

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b) (i) The department shall notify the sentencing court, the Office of State Debt

Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

(e) (i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation

term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Amended by Chapter 120, 2014 General Session
Amended by Chapter 170, 2014 General Session

77-18-1.1. Screening, assessment, and treatment.

(1) As used in this section:

(a) "Assessment" has the same meaning as in Section 41-6a-501.

(b) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, or no contest; and

(ii) conviction of any crime or offense.

(c) "Screening" has the same meaning as in Section 41-6a-501.

(d) "Substance abuse treatment" means treatment obtained through a substance abuse program that is licensed by the Office of Licensing within the Department of Human Services.

(2) On or after July 1, 2009, the courts of the judicial districts where the Drug Offender Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local substance abuse authority regarding available resources, order offenders convicted of a felony to:

(a) participate in a screening prior to sentencing;

(b) participate in an assessment prior to sentencing if the screening indicates an assessment to be appropriate; and

(c) participate in substance abuse treatment if:

(i) the assessment indicates treatment to be appropriate;

(ii) the court finds treatment to be appropriate for the offender; and

(iii) the court finds the offender to be an appropriate candidate for community-based supervision.

(3) The findings from any screening and any assessment conducted under this section shall be part of the presentence investigation report submitted to the court before sentencing of the offender.

(4) Money appropriated by the Legislature to assist in the funding of the screening, assessment, substance abuse treatment, and supervision provided under

this section is not subject to any requirement regarding matching funds from a state or local governmental entity.

Amended by Chapter 342, 2011 General Session
Amended by Chapter 366, 2011 General Session

77-18-3. Disposition of fines.

Fines imposed by the district court shall be paid as provided in Section 78A-5-110.

Amended by Chapter 3, 2008 General Session

77-18-4. Sentence -- Term -- Construction.

(1) Whenever a person is convicted of a crime and the judgment provides for a commitment to the state prison, the court shall not fix a definite term of imprisonment unless otherwise provided by law.

(2) The sentence and judgment of imprisonment shall be for an indeterminate term of not less than the minimum and not to exceed the maximum term provided by law for the particular crime.

(3) Except as otherwise expressly provided by law, every sentence, regardless of its form or terms, which purports to be for a shorter or different period of time, shall be construed to be a sentence for the term between the minimum and maximum periods of time provided by law and shall continue until the maximum period has been reached unless sooner terminated or commuted by authority of the Board of Pardons and Parole.

Amended by Chapter 13, 1994 General Session

77-18-5. Reports by courts and prosecuting attorneys to Board of Pardons and Parole.

In cases where an indeterminate sentence is imposed, the judge and prosecuting attorney may, within 30 days, mail a statement to the Board of Pardons and Parole setting forth the term for which the prisoner ought to be imprisoned together with any information which might aid the board in passing on the application for termination or commutation of the sentence or for parole or pardon.

Amended by Chapter 13, 1994 General Session

77-18-5.5. Judgment of death -- Method is lethal injection -- Exceptions for use of firing squad.

(1) When a defendant is convicted of a capital felony and the judgment of death has been imposed, lethal intravenous injection is the method of execution.

(2) Subsection (1) applies to any defendant sentenced to death on or after May 3, 2004.

(3) If a court holds that a defendant has a right to be executed by a firing squad, the method of execution for that defendant shall be a firing squad. This Subsection (3)

applies to any defendant whose right to be executed by a firing squad is preserved by that judgment.

(4) (a) If a court holds that execution by lethal injection is unconstitutional on its face, the method of execution shall be a firing squad.

(b) If a court holds that execution by lethal injection is unconstitutional as applied, the method of execution for that defendant shall be a firing squad.

Amended by Chapter 51, 2004 General Session

77-18-6. Judgment to pay fine or restitution constitutes a lien.

(1) (a) In cases not supervised by the Department of Corrections, the clerk of the district court shall:

(i) transfer the responsibility to collect past due accounts receivable to the Office of State Debt Collection when the accounts receivable are 90 days or more past due;

(ii) before transferring the responsibility to collect the past due account receivable to the Office of State Debt Collection, record each judgment of conviction of a crime that orders the payment of a fine, forfeiture, surcharge, cost permitted by statute, or fee in the registry of civil judgments, listing the Office of State Debt Collection as the judgment creditor; and

(iii) receive notification from the Office of State Debt Collection when a civil judgment ordered for payment of accounts receivable, as defined in Section 76-3-201.1, has been satisfied.

(b) (i) The clerk of court shall record each judgment of conviction that orders the payment of restitution to a victim in the registry of civil judgments, listing the victim, or the estate of the victim, as the judgment creditor.

(ii) The Department of Corrections shall collect the judgment on behalf of the victim as provided in Subsection 77-18-1(9).

(iii) The court shall collect the judgment on behalf of the victim as provided in Subsection 78A-2-214(2).

(iv) The victim may collect the judgment.

(v) The victim is responsible for timely renewal of the judgment under Section 78B-5-202.

(2) When a fine, forfeiture, surcharge, cost, fee, or restitution is recorded in the registry of civil judgments, the judgment:

(a) constitutes a lien;

(b) has the same effect and is subject to the same rules as a judgment for money in a civil action; and

(c) may be collected by any means authorized by law for the collection of a civil judgment.

Amended by Chapter 170, 2014 General Session

77-18-6.5. Liability of rescued person for costs of emergency response.

(1) Any person who violates Section 76-6-206.1 whose conduct required emergency care, rescue, assistance, or recovery services at the scene of an abandoned or inactive mine may be charged with the expenses incurred in meeting the

emergency.

(2) The court's order shall be a judgment which orders the payment of reimbursement to any public agency or private body that incurred the expenses. The judgment shall constitute a lien when recorded in the judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action.

(3) The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

Enacted by Chapter 223, 1997 General Session

77-18-7. Costs imposed on defendant -- Restrictions.

Unless specifically authorized by statute, a defendant shall not be required to pay court costs in a criminal case either as a part of a sentence or as a condition of probation or dismissal.

Enacted by Chapter 15, 1980 General Session

77-18-8. Fine not paid -- Commitment.

When a defendant is sentenced to pay a fine in addition to a jail or a prison sentence and the judgment is that the jail or prison sentence be suspended upon payment of the fine, the service of the jail or prison sentence shall satisfy the judgment. If a defendant fails to pay the fine and thereafter the court finds that the defendant failed to make a good faith effort to pay the fine, the court may, after a hearing, order the execution of the suspended jail or prison sentence. If a defendant is sentenced to pay a fine only or is sentenced to jail or prison and a fine, with neither suspended, he shall not later be committed to jail for failure to pay the fine.

Enacted by Chapter 15, 1980 General Session

77-18a-1. Appeals -- When proper.

(1) A defendant may, as a matter of right, appeal from:

(a) a final judgment of conviction, whether by verdict or plea;

(b) an order made after judgment that affects the substantial rights of the defendant;

(c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or

(d) an order denying bail, as provided in Subsection 77-20-1(7).

(2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order.

(3) The prosecution may, as a matter of right, appeal from:

(a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;

(b) a pretrial order dismissing a charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;

(c) an order granting a motion to withdraw a plea of guilty or no contest;

(d) an order arresting judgment or granting a motion for merger;

(e) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(f) an order granting a new trial;

(g) an order holding a statute or any part of it invalid;

(h) an order adjudicating the defendant's competency to proceed further in a pending prosecution;

(i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for Execution, that an inmate sentenced to death is incompetent to be executed;

(j) an order reducing the degree of offense pursuant to Section 76-3-402; or

(k) an illegal sentence.

(4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.

Amended by Chapter 175, 2009 General Session

77-18a-2. Capital cases.

After the resolution of an initial appeal of a capital case when the sentence of death has been imposed, a subsequent appeal may not be entertained by any court and a stay of execution of the sentence may not be granted when the appeal does not raise any new matter not previously resolved or when the new matter could have been raised at the previous appeal.

Enacted by Chapter 7, 1990 General Session

77-19-1. Judgment for fine or costs -- Enforcement.

If the judgment is for a fine or costs when allowed by statute and the fine is not paid as ordered by the court, execution or garnishment may be issued as on a judgment in a civil action. The prosecuting attorney, upon written request of the court clerk, shall effectuate collection through execution or garnishment when the fine or costs have not been paid as ordered by the court.

Enacted by Chapter 15, 1980 General Session

77-19-2. Judgment of imprisonment -- Commitment.

If the judgment is for imprisonment, the sheriff of the county or other appropriate custodial officer designated by the court shall, upon receipt of a certified copy of the judgment, deliver the defendant to the warden of the state prison or keeper of the jail. Such custodial officer shall also deliver a certified copy of the judgment and take a receipt from the warden or keeper of the jail for the defendant and return it to the court.

Enacted by Chapter 15, 1980 General Session

77-19-3. Special release from city or county jail -- Purposes.

(1) Any person incarcerated in any city or county jail may, in accordance with the

release policy of the facility, be released from jail during those hours which are reasonable and necessary to accomplish any of the purposes under Subsection (2) if:

(a) the offense is not one for which release is prohibited under state law; and

(b) the judge has not entered an order prohibiting a special release.

(2) The custodial authority at the jail may release an inmate who qualifies under Subsection (1) for:

(a) working at his employment;

(b) seeking employment;

(c) attending an educational institution;

(d) obtaining necessary medical treatment; or

(e) any other reasonable purpose as determined by the custodial authority of the jail.

Amended by Chapter 148, 2007 General Session

77-19-4. Special release from city or county jail -- Conditions and limitations.

(1) All released prisoners under Section 77-19-3 are in the custody of the custodial authority and are subject at any time to being returned to jail, for good cause.

(2) The judge may order that the prisoner:

(a) pay money earned from employment during the jail term to those persons he is legally responsible to support; or

(b) retain sufficient money to pay his costs of transportation, meals, and other incidental and necessary expenses related to his special release.

(3) The custodial authority of the jail shall establish all other conditions of special release.

(4) During all hours when the prisoner is not serving the function for which he is awarded release time, he shall be confined to jail.

(5) The prisoner shall obtain his own transportation to and from the place where he performs the function for which he is released.

Amended by Chapter 148, 2007 General Session
Amended by Chapter 306, 2007 General Session

77-19-5. Special release from city or county jail -- Revocation.

The judge may, for good cause, revoke any release time previously awarded, and shall notify the prisoner that, if he makes written request, a hearing shall be afforded to him to challenge the revocation.

Enacted by Chapter 15, 1980 General Session

77-19-6. Judgment of death -- Warrant -- Delivery of warrant -- Determination of execution time.

(1) (a) When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff of the county where the conviction is had.

(b) The sheriff shall deliver the warrant and a certified copy of the judgment to the executive director of the Department of Corrections or the executive director's designee at the time of delivering the defendant to the custody of the Department of Corrections.

(2) The warrant shall state the conviction, the judgment, the method of execution, and the appointed day the judgment is to be executed, which may not be fewer than 30 days nor more than 60 days from the date of issuance of the warrant, and may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.

(3) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

Amended by Chapter 382, 2008 General Session

77-19-7. Judgment of death -- Statement to Board of Pardons and Parole.

The judge of a court where a judgment of death was had shall, immediately after the conviction, transmit to the chair of the Board of Pardons and Parole a statement of the conviction and judgment and a summary of the evidence given at trial.

Amended by Chapter 13, 1994 General Session

77-19-8. Judgment of death, when suspended, and by whom.

(1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the governor or the Board of Pardons and Parole, may not stay or suspend the execution of a judgment of death.

(2) (a) A court of competent jurisdiction shall issue a temporary stay of judgment of death when:

(i) the judgment is appealed;

(ii) the judgment is automatically reviewed;

(iii) the person sentenced to death files a first petition for postconviction relief after the direct appeal under Title 78B, Chapter 9, Postconviction Remedies Act;

(iv) the person sentenced to death requests counsel under Subsection 78B-9-202(2)(a) to represent the person in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act; or

(v) counsel enters an appearance to represent the person sentenced to death in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act.

(b) A court may not issue a temporary stay of judgment of death when the person sentenced to death files a petition for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act, after a first petition has been denied or dismissed, unless the court first finds all of the following:

(i) the claims would not be barred under Section 78B-9-106;

(ii) the claims are potentially meritorious; and

(iii) the petition may not be reasonably disposed of before the execution date.

(c) (i) The executive director of the Department of Corrections or a designee under Section 77-19-202 may temporarily suspend the execution if the person sentenced to death appears to be incompetent or pregnant.

(ii) A temporary suspension under Subsection (2)(c)(i) shall end if the person is determined to be:

(A) competent;

(B) not pregnant; or

(C) no longer incompetent or pregnant.

(3) (a) The court must vacate a stay issued pursuant to Subsection (2)(a) when the appeal, automatic review, or action under Title 78B, Chapter 9, Postconviction Remedies Act is concluded.

(b) A request for counsel under Section 78B-9-202 does not constitute an application for postconviction or other collateral review and does not toll the statute of limitations under Section 78B-9-107.

Amended by Chapter 165, 2011 General Session

77-19-9. Judgment of death not executed -- Order for execution.

(1) If for any reason a judgment of death has not been executed and remains in force, the court where the conviction was had, on application of the prosecuting attorney, shall order the defendant to be brought before it or, if the defendant is at large, issue a warrant for the defendant's apprehension.

(2) When the defendant is brought before the court, it shall inquire into the facts and, if no legal reason exists against the execution of judgment, the court shall make an order requiring the executive director of the Department of Corrections or the executive director's designee to ensure that the judgment is executed on a specified day, which may not be fewer than 30 nor more than 60 days after the court's order, and may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301. The court shall also draw and have delivered another warrant under Section 77-19-6.

(3) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

Amended by Chapter 382, 2008 General Session

77-19-10. Judgment of death -- Location and procedures for execution.

(1) The executive director of the Department of Corrections or his designee shall ensure that the method of judgment of death specified in the warrant is carried out at a secure correctional facility operated by the department and at an hour determined by the department on the date specified in the warrant.

(2) When the judgment of death is to be carried out by lethal intravenous injection, the executive director of the department or his designee shall select two or more persons trained in accordance with accepted medical practices to administer intravenous injections, who shall each administer a continuous intravenous injection, one of which shall be of a lethal quantity of sodium thiopental or other equally or more effective substance sufficient to cause death.

(3) If the judgment of death is to be carried out by firing squad under Subsection 77-18-5.5(3) or (4), the executive director of the department or his designee shall select a five-person firing squad of peace officers.

(4) Compensation for persons administering intravenous injections and for

members of a firing squad under Subsection 77-18-5.5(3) or (4) shall be in an amount determined by the director of the Division of Finance.

(5) Death under this section shall be certified by a physician.

(6) The department shall adopt and enforce rules governing procedures for the execution of judgments of death.

Amended by Chapter 51, 2004 General Session

77-19-11. Who may be present -- Photographic and recording equipment.

(1) As used in this section:

(a) "Close relative of the deceased victim" means:

(i) the spouse of the victim;

(ii) a parent or stepparent of the victim;

(iii) a brother, sister, stepbrother, stepsister, child, or stepchild of the victim; and

(iv) any person who had a close relationship with the deceased victim, or with a close relative of the victim, upon the recommendation of the victim assistance coordinator for the Department of Corrections or for the Office of the Attorney General.

(b) "Director" means the executive director of the Department of Corrections, or the director's designee.

(2) At the discretion of the director, the following persons may attend the execution:

(a) the prosecuting attorney, or a designated deputy, of the county in which the defendant committed the offense for which he is being executed;

(b) no more than two law enforcement officials from the county in which the defendant committed the offense for which he is being executed;

(c) the attorney general or a designee;

(d) religious representatives, friends, or relatives designated by the defendant, not exceeding a total of five persons; and

(e) unless approved by the director, no more than five close relatives of the deceased victim, as selected by the director, but giving priority in the order listed in Subsection (1)(a).

(3) The persons listed in Subsection (2) may not be required to attend, nor may any of them attend as a matter of right.

(4) The director shall permit the attendance at the execution of members of the press and broadcast news media:

(a) as named by the director in accordance with rules of the department; and

(b) with the agreement of the selected news media members that they serve as a pool for other members of the news media.

(5) (a) Except as provided in Subsection (5)(b), photographic or recording equipment is not permitted at the execution site until the execution is completed, the body is removed, and the site has been restored to an orderly condition. However, the physical arrangements for the execution may not be disturbed.

(b) Audio recording equipment may be used by the department for the purpose of recording the defendant's last words.

(c) The department shall permanently destroy the recording made under Subsection (5)(b) not later than 24 hours after the completion of the execution.

(d) A violation of this subsection is a class B misdemeanor.

(6) All persons in attendance are subject to reasonable search as a condition of attendance.

(7) (a) The following persons may also attend the execution:

(i) staff as determined by the director; and

(ii) no more than three correctional officials from other states that are preparing for executions, but no more than two correctional officials may be from any one state, as designated by the director.

(b) A person younger than 18 years of age may not attend.

(8) The department shall adopt rules governing the attendance of persons, including the number of media representatives, at the execution. These rules shall be in accordance with this section.

Amended by Chapter 1, 2000 General Session
Amended by Chapter 250, 2000 General Session

77-19-12. Return upon death warrant.

After the execution, the executive director of the Department of Corrections or his designee shall make a return upon the death warrant, showing the time, place, and manner in which it was executed.

Amended by Chapter 190, 1988 General Session

77-19-201. Definition.

As used in this part, "incompetent to be executed" means that, due to mental condition, an inmate is unaware of either the punishment he is about to suffer or why he is to suffer it.

Amended by Chapter 71, 2005 General Session

77-19-202. Incompetency or pregnancy of person sentenced to death -- Procedures.

(1) If, after judgment of death, the executive director of the Department of Corrections has good reason to believe that an inmate sentenced to death is pregnant, or has good reason to believe that an inmate's competency to be executed under this chapter should be addressed by a court, the executive director of the Department of Corrections or the executive director's designee shall immediately give written notice to the court in which the judgment of death was rendered, to the prosecuting attorney, and counsel for the inmate. The judgment shall be stayed pending further order of the court.

(2) (a) On receipt of the notice under Subsection (1) of good reason for the court to address an inmate's competency to be executed, the court shall order that the mental condition of the inmate shall be examined under the provisions of Section 77-19-204.

(b) If the inmate is found incompetent, the court shall immediately transmit a certificate of the findings to the Board of Pardons and Parole and continue the stay of

execution pending further order of the court.

(c) If the inmate is subsequently found competent at any time, the judge shall immediately transmit a certificate of the findings to the Board of Pardons and Parole, and shall draw and have delivered another warrant under Section 77-19-6, together with a copy of the certificate of the findings. The warrant shall state an appointed day on which the judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the date of the drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.

(3) (a) If the court finds the inmate is pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and Parole and to the executive director of the Department of Corrections or the executive director's designee, and the court shall issue an order staying the execution of the judgment of death during the pregnancy.

(b) When the court determines the inmate is no longer pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and Parole and draw and have delivered another warrant under Section 77-19-6, with a copy of the certificate of the finding. The warrant shall state an appointed day on which the judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the date of the drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.

(4) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

Amended by Chapter 382, 2008 General Session

77-19-203. Petition for inquiry as to competency to be executed -- Filing -- Contents -- Successive petitions.

(1) If an inmate who has been sentenced to death is or becomes incompetent to be executed, a petition under Subsection (2) may be filed in the district court of the county where the inmate is confined.

(2) The petition shall:

(a) contain a certificate stating that it is filed in good faith and on reasonable grounds to believe the inmate is incompetent to be executed; and

(b) contain a specific recital of the facts, observations, and conversations with the inmate that form the basis for the petition.

(3) The petition may be based upon knowledge or information and belief and may be filed by the inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney representing the state.

(4) Before ruling on a petition filed by an inmate or his counsel alleging that the inmate is incompetent to be executed, the court shall give the state and the Department of Corrections an opportunity to respond to the allegations of incompetency.

(5) If a petition is filed after an inmate has previously been found competent under either this chapter or under Title 77, Chapter 15, Inquiry into Sanity of Defendant, no further hearing on competency may be granted unless the successive petition:

(a) alleges with specificity a substantial change of circumstances subsequent to the previous determination of competency; and

(b) is sufficient to raise a significant question about the inmate's competency to be executed.

Enacted by Chapter 137, 2004 General Session

77-19-204. Order for hearing -- Examinations of inmate -- Scope of examination and report.

(1) When a court has good reason to believe an inmate sentenced to death is incompetent to be executed, it shall stay the execution and shall order the Department of Human Services to examine the inmate and report to the court concerning the inmate's mental condition.

(2) (a) The inmate subject to examination under Subsection (1) shall be examined by at least two mental health experts who are not involved in the inmate's current treatment.

(b) The Department of Corrections shall provide information and materials to the examiners relevant to a determination of the inmate's competency to be executed.

(3) The inmate shall make himself available and fully cooperate in the examination by the Department of Human Services and any other independent examiners for the defense or the state.

(4) The examiners shall in the conduct of their examinations and in their reports to the court consider and address, in addition to any other factors determined to be relevant by the examiners:

(a) the inmate's awareness of the fact of the inmate's impending execution;

(b) the inmate's understanding that the inmate is to be executed for the crime of murder;

(c) the nature of the inmate's mental disorder, if any, and its relationship to the factors relevant to the inmate's competency; and

(d) whether psychoactive medication is necessary to maintain or restore the inmate's competency.

(5) The examiners who are examining the inmate shall each provide an initial report to the court and the attorneys for the state and the inmate within 60 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the inmate to be executed, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(6) (a) All interviews with the inmate conducted by the examiners shall be videotaped, unless otherwise ordered by the court for good cause shown. The Department of Corrections shall provide the videotaping equipment and facilitate the videotaping of the interviews.

(b) Immediately following the videotaping, the videotape shall be provided to the attorney for the state, who shall deliver it as soon as practicable to the judge in whose court the competency determination is pending.

(c) The court shall grant counsel for the state and for the inmate, and examiners who are examining the inmate under this part access to view the videotape at the court building where the court is located that is conducting the competency determination under this part.

(7) Any written report submitted by an examiner shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the examiner's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion; and

(d) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(8) (a) When the reports are received, the court shall set a date for a competency hearing, which shall be held within not less than five and not more than 15 days, unless the court extends the time for good cause.

(b) Any examiner directed by the Department of Human Services to conduct the examination may be subpoenaed to provide testimony at the hearing. If the examiners are in conflict as to the competency of the inmate, all of them should be called to testify at the hearing if they are reasonably available.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. An examiner called by the court may be cross-examined by counsel for the parties.

(9) (a) An inmate shall be presumed competent to be executed unless the court, by a preponderance of the evidence, finds the inmate incompetent to be executed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetency to be executed does not operate as an adjudication of the inmate's incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(10) (a) If the court finds the inmate incompetent to be executed, its order shall contain findings addressing each of the factors in Subsections (4)(a) through (d).

(b) The order finding the inmate incompetent to be executed shall be delivered to the Department of Human Services, and shall be accompanied by:

(i) copies of the reports of the examiners filed with the court pursuant to the order of examination, if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the inmate; and

(iii) any other documents made available to the court by either the defense or the state, pertaining to the inmate's current or past mental condition.

(c) A copy of the order finding the inmate incompetent to be executed shall be delivered to the Department of Corrections.

Enacted by Chapter 137, 2004 General Session

77-19-205. Procedures on finding of incompetency to be executed -- Subsequent hearings -- Notice to attorneys.

(1) (a) (i) If after the hearing under Section 77-19-204 the inmate is found to be incompetent to be executed, the court shall continue the stay of execution and the inmate shall receive appropriate mental health treatment.

(ii) Appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

(b) The court shall order the executive director of the Department of Human Services to provide periodic assessments to the court regarding the inmate's competency to be executed.

(c) The inmate shall be held in secure confinement, either at the prison or the State Hospital, as agreed upon by the executive director of the Department of Corrections and the executive director of the Department of Human Services. If the inmate remains at the prison, the Department of Human Services shall consult with the Department of Corrections regarding the inmate's mental health treatment.

(2) (a) The examiner or examiners designated by the executive director of the Department of Human Services to assess the inmate's progress toward competency may not be involved in the routine treatment of the inmate.

(b) The examiner or examiners shall each provide a full report to the court and counsel for the state and the inmate within 90 days of receipt of the court's order. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel for the state and the inmate a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner has up to an additional 90 days to provide the full report, unless the court enlarges the time for good cause. The full report shall assess:

(i) the facility's or program's capacity to provide appropriate treatment for the inmate;

(ii) the nature of treatments provided to the inmate;

(iii) what progress toward restoration of competency has been made;

(iv) the inmate's current level of mental disorder and need for treatment, if any; and

(v) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party may order the Department of Human Services to appoint additional mental health examiners to examine the inmate and advise the court on the inmate's current mental status and progress toward competency restoration.

(4) (a) Upon receipt of the full report, the court shall hold a hearing to determine the inmate's current status. At the hearing, the burden of proving that the inmate is competent is on the proponent of competency.

(b) Following the hearing, the court shall determine by a preponderance of evidence whether the inmate is competent to be executed.

(5) (a) If the court determines that the inmate is competent to be executed, it shall enter findings and shall proceed under Subsection 77-19-202(2)(c).

(b) (i) If the court determines the inmate is still incompetent to be executed, the inmate shall continue to receive appropriate mental health treatment, and the court

shall hold hearings no less frequently than at 18-month intervals for the purpose of determining the defendant's competency to be executed.

(ii) Continued appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

(6) (a) If at any time the clinical director of the Utah State Hospital or the primary treating mental health professional determines that the inmate has been restored to competency, he shall notify the court.

(b) The court shall conduct a hearing regarding the inmate's competency to be executed within 30 working days of the receipt of the notification under Subsection (6)(a), unless the court extends the time for good cause. The court may order a hearing or rehearing at any time on its own motion.

(7) Notice of a hearing on competency to be executed shall be given to counsel for the state and for the inmate, as well as to the office of the prosecutor who prosecuted the inmate on the original capital charge.

Enacted by Chapter 137, 2004 General Session

77-19-206. Expenses -- Allocation.

The Department of Human Services and the Department of Corrections shall each pay 1/2 of the costs of any examination of the inmate conducted pursuant to Sections 77-19-204 and 77-19-205 to determine if an inmate is competent to be executed.

Enacted by Chapter 137, 2004 General Session

77-20-1. Right to bail -- Denial of bail -- Hearing.

(1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(2) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(d) ensure the safety of the public.

(3) (a) The initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest or by the magistrate or court presiding over the accused's first judicial appearance.

(b) A person arrested for a violation of a jail release agreement or jail release order issued pursuant to Section 77-36-2.5:

(i) may not be released before the accused's first judicial appearance; and

(ii) may be denied bail by the court under Subsection 77-36-2.5(8) or (12).

(4) The magistrate or court may rely upon information contained in:

(a) the indictment or information;

(b) any sworn probable cause statement;

(c) information provided by any pretrial services agency; or

(d) any other reliable record or source.

(5) (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

(b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The magistrate or court may rely on information as provided in Subsection (4) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(6) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(7) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

(8) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

(a) the prosecutor files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

Amended by Chapter 240, 2013 General Session

77-20-3. Release on own recognizance -- Changing amount of bail or conditions of release.

(1) Any person who may be admitted to bail may likewise be released on his own recognizance in the discretion of the magistrate or court.

(2) After releasing the defendant on his own recognizance or admitting the defendant to bail, the magistrate or court may:

(a) impose bail or increase or decrease the amount of the bail; and

(b) impose or change the conditions of release under Subsection 77-20-1(2).

Amended by Chapter 293, 1998 General Session

77-20-4. Bail to be posted in cash, by credit or debit card, or written undertaking.

(1) Bail may be posted:

(a) in cash;

(b) by written undertaking with or without sureties at the discretion of the magistrate; or

(c) by credit or debit card, at the discretion of the judge or bail commissioner.

(2) Bail may not be accepted without receiving in writing at the time the bail is posted the current mailing address and telephone number of the surety.

(3) Bail posted by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.

(4) Bail refunded by the court may be refunded by credit to the debit or credit card, or cash. The amount refunded shall be the full amount received by the court under Subsection (3), which may be less than the full amount of the bail set by the court.

(5) Before refunding bail that is posted by the defendant in cash, by credit card, or by debit card, the court may apply the amount posted toward accounts receivable, as defined in Section 76-3-201.1, that are owed by the defendant in the priority set forth in Section 77-38a-404.

Amended by Chapter 170, 2014 General Session

77-20-5. Qualifications of sureties -- Justification -- Requirements of undertaking.

(1) The sureties on written undertakings shall be real or personal property holders within the state. The qualifications and bonding limits of bail bond sureties who are engaged in the for-profit, commercial business of posting property bonds shall be established by the Bail Bond Surety Oversight Board and rules adopted by the insurance commissioner. All other sureties shall collectively have a net worth of at least twice the amount of the undertaking, exclusive of property exempt from execution.

(2) Each surety shall justify by affidavit upon the undertaking and each may be further examined upon oath by the magistrate or by the prosecuting attorney in the presence of a magistrate, in respect to his property and net worth.

(3) The undertaking shall, in addition to other requirements, provide that each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the undertaking may be served, and that his liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

Amended by Chapter 293, 1998 General Session

77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration if charges not filed.

(1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on the written undertaking are liable on the undertaking during all proceedings and for all court appearances required of the defendant up to and including the surrender of the

defendant for sentencing, irrespective of any contrary provision in the undertaking. Any failure of the defendant to appear when required is a breach of the conditions of the undertaking or bail and subjects it to forfeiture, regardless of whether or not notice of appearance was given to the sureties. Upon sentencing the bond shall be exonerated without motion.

(b) If the sentence includes a commitment to a jail or prison, the bond shall be exonerated when the defendant appears at the appropriate jail or prison, unless the judge doesn't require the defendant to begin the commitment within seven days, in which case the bond is exonerated upon sentencing.

(c) For purposes of this section, an order of the court accepting a plea in abeyance agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea.

(d) Any suspended or deferred sentencing is not the responsibility of the surety and the bond is exonerated without any motion, upon acceptance of the court and the defendant of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred sentencing reviews or any other deferred sentencing agreement.

(e) If a surety issues a bond after the sentencing, the surety is liable on the undertaking during all proceedings and for all court appearances required of the defendant up to and including the defendant's appearance to commence serving the sentence imposed under Subsection (1).

(2) If no information or indictment charging a person with an offense is filed in court within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a person from conditions of release at the person's request, and the bond or undertaking is exonerated without further order of the court unless the prosecutor requests an extension of time before the end of the 120-day period by:

(a) filing a notice for extension with the court; and

(b) serving the notice for extension upon the sureties and the person or his attorney.

(3) A court may extend bail and conditions of release for good cause.

(4) Subsection (2) does not prohibit the filing of charges against a person at any time.

(5) If the court does not set on a calendar any hearings on a case within 18 months of the last court docket activity on a case, the undertaking of bail is exonerated without motion.

Amended by Chapter 179, 2011 General Session

77-20-8. Grounds for detaining or releasing defendant on conviction and prior to sentence.

(1) Upon conviction, by plea or trial, the court shall order that the convicted defendant who is waiting imposition or execution of sentence be detained, unless the court finds by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

(2) If the court finds the defendant does not need to be detained, the court shall order the release of the defendant on suitable conditions, which may include the conditions under Subsection 77-20-10(2).

Amended by Chapter 160, 1988 General Session

77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.

(1) (a) Sureties may at any time prior to a defendant's failure to appear surrender the defendant and obtain exoneration of bail, by notifying the clerk of the court in which the bail was posted of the defendant's surrender and requesting exoneration. Notification shall be made immediately following the surrender by surface mail, electronic mail, or fax.

(b) To effect surrender, a certified copy of the surety's undertaking from the court in which it was posted or a copy of the bail agreement with the defendant shall be delivered to the on-duty jailer, who shall detain the defendant in the on-duty jailer's custody as upon a commitment, and shall in writing acknowledge the surrender upon the copy of the undertaking or bail agreement. The certified copy of the undertaking or copy of the bail agreement upon which the acknowledgment of surrender is endorsed shall be filed with the court. The court may then, upon proper application, order the undertaking exonerated and may order a refund of any paid premium, or part of a premium, as it finds just.

(2) For the purpose of surrendering the defendant, the sureties may:

(a) arrest the defendant:

(i) at any time before the defendant is finally exonerated; and

(ii) at any place within the state; and

(b) surrender the defendant to any county jail booking facility in Utah.

(3) An arrest under this section is not a basis for exoneration of the bond under Section 77-20b-101.

(4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond Recovery Act.

Amended by Chapter 245, 2001 General Session

77-20-9. Disposition of forfeitures.

If by reason of the neglect of the defendant to appear, money deposited instead of bail or money paid by sureties on surety bond is forfeited and the forfeiture is not discharged or remitted, the clerk with whom it is deposited or paid shall, immediately after final adjournment of the court, pay over the money forfeited as follows:

(1) the forfeited bail cases in or appealed from district courts shall be distributed as provided in Section 78A-5-110;

(2) the forfeited bail in cases in precinct justice courts or in municipal justice courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121;

(3) the forfeited bail in cases in justice courts where the offense is not triable in that court shall be paid into the General Fund; and

(4) the forfeited bail in cases not provided for in this section shall be paid 50% to the state treasurer and the remaining 50% to the county treasurer in the county in which

the violation occurred or the forfeited bail is collected.

Amended by Chapter 3, 2008 General Session

77-20-10. Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.

(1) The court shall order that a defendant who has been found guilty of an offense in a court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:

(a) the appeal raises a substantial question of law or fact likely to result in:

(i) reversal;

(ii) an order for a new trial; or

(iii) a sentence that does not include a term of imprisonment in jail or prison;

(b) the appeal is not for the purpose of delay; and

(c) by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

(2) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to conditions that result in the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of any other person and the community. The conditions may include that the defendant:

(a) post appropriate bail;

(b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond Act, in an amount necessary to assure the appearance of the defendant as required;

(c) (i) execute a written agreement to forfeit, upon failing to appear as required, designated property, including money, as is reasonably necessary to assure the appearance of the defendant; and

(ii) post with the court indicia of ownership of the property or a percentage of the money as the court may specify;

(d) not commit a federal, state, or local crime during the period of release;

(e) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;

(f) maintain employment, or if unemployed, actively seek employment;

(g) maintain or commence an educational program;

(h) abide by specified restrictions on personal associations, place of abode, or travel;

(i) avoid all contact with the victims of the offense and with any witnesses who testified against the defendant or potential witnesses who may testify concerning the

offense if the appeal results in a reversal or an order for a new trial;

(j) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other designated agency;

(k) comply with a specified curfew;

(l) not possess a firearm, destructive device, or other dangerous weapon;

(m) not use alcohol, or any narcotic drug or other controlled substances except as prescribed by a licensed medical practitioner;

(n) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain under the supervision of or in a specified institution if required for that purpose;

(o) return to custody for specified hours following release for employment, schooling, or other limited purposes;

(p) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of any other person and the community; and

(q) if convicted of committing a sexual offense or an assault or other offense involving violence against a child 17 years of age or younger, is limited or denied access to any location or occupation where children are, including but not limited to:

(i) any residence where children are on the premises;

(ii) activities, including organized activities, in which children are involved; and

(iii) locations where children congregate, or where a reasonable person should know that children congregate.

(3) The court may, in its discretion, amend an order granting release to impose additional or different conditions of release.

(4) If defendant has been found guilty of an offense in a court not of record and files a timely notice of appeal pursuant to Subsection 78A-7-118(1) for a trial de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance of the evidence that the defendant poses a danger to another person or the community.

(5) If a stay is ordered, the court may order post-conviction restrictions on the defendant's conduct as appropriate, including:

(a) continuation of any pre-trial restrictions or orders;

(b) sentencing protective orders under Section 77-36-5.1;

(c) drug and alcohol use;

(d) use of an ignition interlock; and

(e) posting appropriate bail.

(6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by the district court.

Amended by Chapter 380, 2012 General Session

77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on failure of timely notice.

(1) If a defendant who has posted bail fails to appear before the appropriate court as required, the court shall within 30 days of the failure to appear issue a bench warrant that includes the original case number. The court shall also direct that the surety be given notice of the nonappearance. The clerk of the court shall:

(a) mail notice of nonappearance by certified mail, return receipt requested, within 30 days to the address of the surety;

(b) notify the surety as listed on the bond of the name, address, and telephone number of the prosecutor;

(c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at the same time notice is sent under Subsection (1)(a); and

(d) ensure that the name, address, and telephone number of the surety or its agent as listed on the bond is stated on the bench warrant.

(e) mail notice of the failure to appear to the bail agent if the surety is different than the producer's agent.

(2) The prosecutor may mail notice of nonappearance by certified mail, return receipt requested, to the address of the surety as listed on the bond within 37 days after the date of the defendant's failure to appear.

(3) If notice of nonappearance is not mailed to a surety as listed on the bond, other than the defendant, in accordance with Subsection (1) or (2), the surety and its agent are relieved of further obligation under the bond if the surety's current name and address or the current name and address of the surety's agent are on the bail bond in the court's file.

(4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled court appearance, the court may reinstate the bond without further notice to the bond company.

(ii) If the defendant, while in custody, appears on the case for which the bond was posted, the court may not reinstate the bond without the consent of the bond company.

(b) If a defendant fails to appear within seven days after a scheduled court appearance, the court may not reinstate the bond without the consent of the surety.

(c) If the defendant is arrested and booked into a county jail booking facility pursuant to a warrant for failure to appear on the original charges and the court is notified of the arrest, or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of judgment of forfeiture, the court shall exonerate the bond.

(d) Unless the court makes a finding of good cause why the bond should not be exonerated, it shall exonerate the bond if:

(i) the surety has delivered the defendant to the county jail booking facility in the county where the original charge is pending;

(ii) the defendant has been released on a bond secured from a subsequent surety for the original charge and the failure to appear;

(iii) after an arrest, the defendant has escaped from jail or has been released on the defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail capacity, or by a sheriff's release under Section 17-22-5.5;

(iv) the surety has transported or agreed to pay for the transportation of the defendant from a location outside of the county back to the county where the original charge is pending, and the payment is in an amount equal to government transportation

expenses listed in Section 76-3-201; or

(v) the surety demonstrates by a preponderance of the evidence that:

(A) at the time the surety issued the bond, it had made reasonable efforts to determine that the defendant was legally present in the United States;

(B) a reasonable person would have concluded, based on the surety's determination, that the defendant was legally present in the United States; and

(C) the surety has failed to bring the defendant before the court because the defendant is in federal custody or has been deported.

(e) Under circumstances not otherwise provided for in this section, the court may exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's motion and there is good cause for the bond to be exonerated.

(f) If a surety's bond has been exonerated under this section and the surety remains liable for the cost of transportation of the defendant, the surety may take custody of the defendant for the purpose of transporting the defendant to the jurisdiction where the charge is pending.

Amended by Chapter 179, 2011 General Session

77-20b-102. Time for bringing defendant to court.

(1) If notice of nonappearance has been mailed to a surety under Section 77-20b-101, the surety may bring the defendant before the court or surrender the defendant into the custody of a county sheriff within the state within six months of the date of nonappearance, during which time a forfeiture action on the bond may not be brought.

(2) A surety may request an extension of the six-month time period in Subsection (1), if the surety within that time:

(a) files a motion for extension with the court; and

(b) mails the motion for extension and a notice of hearing on the motion to the prosecutor.

(3) The court may extend the six-month time in Subsection (1) for not more than 60 days, if the surety has complied with Subsection (2) and the court finds good cause.

Amended by Chapter 259, 2000 General Session

77-20b-103. Defendant in custody -- Notice to prosecutor.

(1) If a surety is unable to bring a defendant to the court because the defendant is and will be in the custody of authorities of another jurisdiction, the surety shall notify the court and the prosecutor and provide the name, address, and telephone number of the custodial authority.

(2) If the defendant is subject to extradition or other means by which the state can return the defendant to the court's custody, and the surety gives notice under Subsection (1), the surety's bond shall be exonerated:

(a) if the prosecutor elects in writing not to extradite the defendant immediately; and

(b) if the prosecutor elects in writing to extradite the defendant, to the extent the bond exceeds the reasonable, actual, or estimated costs to extradite and return the

defendant to the court's custody, upon the occurrence of the earlier of:

(i) the prosecuting attorney's lodging a detainer on the defendant; or

(ii) 60 days after the surety gives notice to the prosecutor under Subsection (1), if the defendant remains in custody of the same authority during that 60-day period.

Amended by Chapter 259, 2000 General Session

77-20b-104. Forfeiture of bail.

(1) If a surety fails to bring the defendant before the court within the time provided in Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:

(a) filing a motion for bail forfeiture with the court, supported by proof of notice to the surety of the defendant's nonappearance; and

(b) mailing a copy of the motion to the surety.

(2) A court shall enter judgment of bail forfeiture without further notice if it finds by a preponderance of the evidence:

(a) the defendant failed to appear as required;

(b) the surety was given notice of the defendant's nonappearance in accordance with Section 77-20b-101;

(c) the surety failed to bring the defendant to the court within the six-month period under Section 77-20b-102; and

(d) the prosecutor has complied with the notice requirements under Subsection (1).

(3) If the surety shows by a preponderance of the evidence that it has failed to bring the defendant before the court because the defendant is deceased through no act of the surety, the court may not enter judgment of bail forfeiture and the bond is exonerated.

(4) The amount of bail forfeited is the face amount of the bail bond, but if the defendant is in the custody of another jurisdiction and the state extradites or intends to extradite the defendant, the court may reduce the amount forfeited to the actual or estimated costs of returning the defendant to the court's jurisdiction. A judgment under Subsection (5) shall:

(a) identify the surety against whom judgment is granted;

(b) specify the amount of bail forfeited;

(c) grant the forfeiture of the bail; and

(d) be docketed by the clerk of the court in the civil judgment docket.

(5) A prosecutor may immediately commence collection proceedings to execute a judgment of bond forfeiture against the assets of the surety.

Amended by Chapter 332, 2006 General Session

77-20b-105. Revocation of bond.

The surety is entitled to obtain the exoneration of its bond prior to judgment by providing written proof to the court and the prosecutor that:

(1) the defendant has been booked for failure to appear regarding the charge for which the bond was issued; or

(2) the defendant is in custody and the surety has served the defendant's bond revocation on the custodial authority.

Enacted by Chapter 332, 2006 General Session

77-21-1. Short title -- Construction.

This chapter may be cited as the "Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings." It shall be interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Enacted by Chapter 15, 1980 General Session

77-21-2. Procedure to secure attendance in another state.

If a judge of a court of record in any state, which by its laws has made provisions for commanding persons within that state to attend and testify in this state, certifies under the seal of the court that there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in the prosecution or grand jury investigation and that his presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record within this state in the county in which the person is found, the judge shall fix a time and place for a hearing and make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct the witness to be immediately brought before him for the hearing, and the judge at the hearing being satisfied of the desirability of custody and delivery, for which determination the certificate shall be prima facie proof of desirability, may, in lieu of issuing subpoena or summons, order the witness to be immediately taken into custody and delivered to an officer of the requesting state.

If the witness who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 20 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $30 for each day he is required to travel and attend as a witness, fails without good cause to

attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Enacted by Chapter 15, 1980 General Session

77-21-3. Procedure to secure attendance of witness from without state.

If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered such sum as may be required by the laws of the state in which the witness is found, not exceeding the sum of 20 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $30 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If the witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Enacted by Chapter 15, 1980 General Session

77-21-4. Fees.

Whenever a judge of a court of record of this state issues a certificate under the provisions of this chapter to obtain the attendance of a witness for the prosecution from without the state in a criminal prosecution or grand jury investigation commenced or about to commence he shall designate therein a suitable peace officer of this state to present the certificate to the proper officer or tribunal of the state wherein the witness is found and to tender to the witness his per diem and mileage fees.

The officer shall exhibit the certificate to the county auditor of the county in which the criminal proceeding is pending and the auditor shall draw his warrant upon the county treasurer in favor of the officer in the amount to be tendered the witness. The officer shall be liable upon his official bond for the proper disposition of the money received.

In all cases in which the officer is required to travel in order to present the certificate and tender fees, his actual and necessary traveling expenses shall be paid out of the fund from which witnesses for the prosecution in the criminal proceeding are

paid.

Enacted by Chapter 15, 1980 General Session

77-21-5. Witnesses not subject to arrest or service of process.

If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not, while in this state pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom he shall not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

Enacted by Chapter 15, 1980 General Session

77-22-1. Declaration of necessity.

It is declared, as a matter of legislative determination, that it is necessary to grant subpoena powers in aid of criminal investigations and to provide a method of keeping information gained from investigations secret both to protect the innocent and to prevent criminal suspects from having access to information prior to prosecution.

Amended by Chapter 296, 1997 General Session

77-22-2. Investigations -- Right to subpoena witnesses and require production of evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed court -- Disclosure of information.

(1) As used in this section, "prosecutor" means the attorney general, county attorney, district attorney, or municipal attorney.

(2) (a) In any matter involving the investigation of a crime or malfeasance in office, or any criminal conspiracy or activity, the prosecutor may, upon application and approval of the district court and for good cause shown, conduct a criminal investigation.

(b) The application and statement of good cause shall state whether or not any other investigative order related to the investigation at issue has been filed in another court.

(3) (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:

(i) subpoena witnesses;

(ii) compel their attendance and testimony under oath to be recorded by a suitable electronic recording device or to be given before any certified court reporter; and

(iii) require the production of books, papers, documents, recordings, and any other items that constitute evidence or may be relevant to the investigation.

(b) The prosecutor shall:

(i) apply to the district court for each subpoena; and

(ii) show that the requested information is reasonably related to the criminal investigation authorized by the court.

(4) (a) The prosecutor shall state in each subpoena:

(i) the time and place of the examination;

(ii) that the subpoena is issued in aid of a criminal investigation; and

(iii) the right of the person subpoenaed to have counsel present.

(b) The examination may be conducted anywhere within the jurisdiction of the prosecutor issuing the subpoena.

(c) The subpoena need not disclose the names of possible defendants.

(d) Witness fees and expenses shall be paid as in a civil action.

(5) (a) At the beginning of each compelled interrogation, the prosecutor shall personally inform each witness:

(i) of the general subject matter of the investigation;

(ii) of the privilege to, at any time during the proceeding, refuse to answer any question or produce any evidence of a communicative nature that may result in self-incrimination;

(iii) that any information provided may be used against the witness in a subsequent criminal proceeding; and

(iv) of the right to have counsel present.

(b) If the prosecutor has substantial evidence that the subpoenaed witness has committed a crime that is under investigation, the prosecutor shall:

(i) inform the witness in person before interrogation of that witness's target status; and

(ii) inform the witness of the nature of the charges under consideration against the witness.

(6) (a) (i) The prosecutor may make written application to any district court showing a reasonable likelihood that publicly releasing information about the identity of a witness or the substance of the evidence resulting from a subpoena or interrogation would pose a threat of harm to a person or otherwise impede the investigation.

(ii) Upon a finding of reasonable likelihood, the court may order the:

(A) interrogation of a witness be held in secret;

(B) occurrence of the interrogation and other subpoenaing of evidence, the identity of the person subpoenaed, and the substance of the evidence obtained be kept secret; and

(C) record of testimony and other subpoenaed evidence be kept secret unless the court for good cause otherwise orders.

(b) After application, the court may by order exclude from any investigative hearing or proceeding any persons except:

(i) the attorneys representing the state and members of their staffs;

(ii) persons who, in the judgment of the attorneys representing the state, are reasonably necessary to assist in the investigative process;

(iii) the court reporter or operator of the electronic recording device; and

(iv) the attorney for the witness.

(c) This chapter does not prevent attorneys representing the state or members of their staff from disclosing information obtained pursuant to this chapter for the

purpose of furthering any official governmental investigation.

(d) (i) If a secrecy order has been granted by the court regarding the interrogation or disclosure of evidence by a witness under this subsection, and if the court finds a further restriction on the witness is appropriate, the court may order the witness not to disclose the substance of the witness's testimony or evidence given by the witness to others.

(ii) Any order to not disclose made under this subsection shall be served with the subpoena.

(iii) In an appropriate circumstance the court may order that the witness not disclose the existence of the investigation to others.

(iv) Any order under this Subsection (6)(d) must be based upon a finding by the court that one or more of the following risks exist:

(A) disclosure by the witness would cause destruction of evidence;

(B) disclosure by the witness would taint the evidence provided by other witnesses;

(C) disclosure by the witness to a target of the investigation would result in flight or other conduct to avoid prosecution;

(D) disclosure by the witness would damage a person's reputation; or

(E) disclosure by the witness would cause a threat of harm to any person.

(e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction to a witness not to disclose the substance of testimony or evidence provided and the prosecuting agency proves by a preponderance of the evidence that a witness has violated that order, the court may hold the witness in contempt.

(ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not infringe on the attorney-client relationship between the witness and the witness's attorney or on any other legally recognized privileged relationship.

(7) (a) (i) The prosecutor may submit to any district court a separate written request that the application, statement of good cause, and the court's order authorizing the investigation be kept secret.

(ii) The request for secrecy is a public record under Title 63G, Chapter 2, Government Records Access and Management Act, but need not contain any information that would compromise any of the interest listed in Subsection (7)(c).

(b) With the court's permission, the prosecutor may submit to the court, in camera, any additional information to support the request for secrecy if necessary to avoid compromising the interests listed in Subsection (7)(c).

(c) The court shall consider all information in the application and order authorizing the investigation and any information received in camera and shall order that all information be placed in the public file except information that, if disclosed, would pose:

(i) a substantial risk of harm to a person's safety;

(ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or

(iii) a serious impediment to the investigation.

(d) Before granting an order keeping secret documents and other information received under this section, the court shall narrow the secrecy order as much as reasonably possible in order to preserve the openness of court records while protecting

the interests listed in Subsection (7)(c).

Amended by Chapter 6, 2009 General Session

77-22-2.5. Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:

(a) (i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(ii) "Electronic communication" does not include:

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device; or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(b) "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.

(c) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(d) "Internet service provider" has the same definition as in Section 76-10-1230.

(e) "Prosecutor" has the same definition as in Section 77-22-2.

(f) "Sexual offense against a minor" means:

(i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual exploitation of a minor;

(ii) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

(iii) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-10-1206; or

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401.

(g) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsection (c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

(c) submit the request to a district court judge for a court order, consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier was suspected of being used in the commission of the offense:

(i) names of subscribers, service customers, and users;

(ii) addresses of subscribers, service customers, and users;

(iii) records of session times and durations;

(iv) length of service, including the start date and types of service utilized; and

(v) telephone or other instrument subscriber numbers or other subscriber identifiers, including any temporarily assigned network address.

(3) A court order issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce any records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation of the suspected criminal activity or offense as described in the court order.

(4) (a) An electronic communications system or service or remote computing service provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.

(b) The law enforcement agency conducting the investigation shall pay the fee.

(5) The electronic communications system or service or remote computing service provider served with or responding to the court order may not disclose the court order to the account holder identified pursuant to the court order for a period of 90 days.

(6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that it does not have the information.

(7) There is no cause of action against any provider or wire or electronic communication service, or its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.

(8) (a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

(9) Every prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

(a) the number of requests for court orders authorized by the prosecutorial agency;

(b) the number of orders issued by the court and the criminal offense, pursuant

to Subsection (2), each order was used to investigate; and

(c) if the court order led to criminal charges being filed, the type and number of offenses charged.

Amended by Chapter 47, 2014 General Session

77-22-4. Investigation records to be filed with court.

In all investigations under Section 77-22-2, the attorney general, county attorney, or district attorney shall maintain and file with the district court the following records of the criminal investigation, unless otherwise ordered by the court:

(1) a copy of the good cause statement and application for the authorization of the criminal investigation;

(2) a copy of all motions made to the court by the attorney general, the county attorney, or the district attorney;

(3) a copy of all court orders;

(4) a copy of all subpoenas issued;

(5) detailed descriptions of all documents and other evidence produced in response to subpoenas;

(6) a copy of all transcripts of testimony taken pursuant to the subpoena; and

(7) a copy of all written communications between the court and the attorney general, county attorney, or district attorney, and staff.

Amended by Chapter 38, 1993 General Session

77-22-4.5. Prosecutorial authority to compromise an offense regarding a witness.

(1) As used in this section, "prosecutor" includes the state attorney general and any assistant, a district attorney and any deputy, a county attorney and any deputy, and a municipal prosecutor and any deputy.

(2) This chapter does not prohibit or limit the authority of a prosecutor to divert, reduce, or compromise any criminal charge against a witness or other party when the witness voluntarily enters into an agreement to provide testimony or other evidence against himself or another accused in consideration for the diversion, reduction, or compromise if:

(a) the prosecutor holds authority to prosecute the offense against the witness or other party; and

(b) the complete agreement with the witness is in writing and a copy of the agreement is given to the witness.

(3) Any agreement under Subsection (2) is subject to discovery by counsel for the accused in any prosecution in which the witness with whom the agreement is made has agreed to testify.

Enacted by Chapter 115, 1995 General Session

77-22-5. Prosecutorial powers.

The powers of this chapter are in addition to any other powers granted to the

attorney general or county attorneys.

Enacted by Chapter 123, 1989 General Session

77-22a-1. Administrative subpoenas -- Controlled substances investigations -- Procedures -- Witness fees.

(1) (a) The administrative subpoena process of this chapter may be used only to obtain third party information under circumstances where it is clear that the subpoenaed information is not subject to a claim of protection under the Fourth, Fifth, or Sixth Amendment, United States Constitution, or a similar claim under Article I, Sec. 12 and Sec. 14, Utah Constitution.

(b) A party subpoenaed under this chapter shall be advised by the subpoena that the party has a right to challenge the subpoena by motion to quash filed in the appropriate district court named in the subpoena before compliance is required.

(2) (a) In any investigation relating to an attorney's functions under this chapter regarding controlled substances, the attorney general or a deputy or assistant attorney general, the county attorney or a deputy county attorney, or the district attorney or deputy district attorney may subpoena witnesses, compel the attendance and testimony of witnesses, or require the production of any records including books, papers, documents, and other tangible things that constitute or contain evidence found by the attorney general or a deputy or assistant attorney general or the county attorney or district attorney, as provided under Sections 17-18a-202 and 17-18a-203, or the county attorney's or district attorney's deputy under Section 17-18a-602, to be relevant or material to the investigation.

(b) The attendance of witnesses or the production of records may be required from any place within the state.

(3) Witnesses subpoenaed under this section shall be paid the same fees and mileage costs as witnesses in the state district courts.

(4) If the attorney general, a deputy or assistant attorney general, or the county attorney or district attorney, or a deputy attorney determines that disclosure of the existence of an administrative subpoena or of the information sought or of the existence of the investigation under which it is issued would pose a threat of harm to a person or otherwise impede the investigation, the subpoena shall contain language on its face directing that the witness not disclose to any person the existence or service of the subpoena, the information being sought, or the existence of an investigation.

Amended by Chapter 237, 2013 General Session

77-22a-2. Service of administrative subpoena.

(1) A subpoena issued under this section may be served by any person designated in the subpoena for that purpose. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association subject to suit under a common name by delivering the subpoena to an officer, managing or general agent, or other agent authorized by appointment or law to receive service of process.

(2) The affidavit of the person serving the subpoena, when entered on a copy of the subpoena by the person serving it, is proof of service.

Enacted by Chapter 9, 1989 General Session

77-22a-3. Compliance with administrative subpoena.

(1) In the case of contumacy by or refusal to obey a subpoena issued to any person, the attorney general or a deputy or assistant attorney general or the county attorney or district attorney or his deputy may compel compliance with the subpoena through the district court:

(a) in the jurisdiction where the investigation is carried on;

(b) where the subpoenaed person is an inhabitant;

(c) where he carries on business; or

(d) where he may be found.

(2) The court may issue an order requiring the person subpoenaed to produce records or to appear before the attorney general or deputy or assistant attorney general, or the county attorney or district attorney or his deputy who issued the subpoena testimony touching the matter under investigation.

(3) Any failure to obey the court order may be punished by the court as contempt. All process in the case may be served in any judicial district in which the person may be found within the state.

(4) A witness may not be held liable in any civil or criminal proceeding for producing records or disclosing information to the person issuing the administrative subpoena as commanded by the subpoena.

Amended by Chapter 38, 1993 General Session

77-22b-1. Immunity granted to witness.

(1) (a) A witness who refuses, or is likely to refuse, on the basis of the witness's privilege against self-incrimination to testify or provide evidence or information in a criminal investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of an investigation or inquiry being conducted by a government agency or commission, or by either house of the Legislature, a joint committee of the two houses, or a committee or subcommittee of either house, may be compelled to testify or provide evidence or information by any of the following, after being granted use immunity with regards to the compelled testimony or production of evidence or information:

(i) the attorney general or any assistant attorney general authorized by the attorney general;

(ii) a district attorney or any deputy district attorney authorized by a district attorney;

(iii) in a county not within a prosecution district, a county attorney or any deputy county attorney authorized by a county attorney;

(iv) a special counsel for the grand jury;

(v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec. 16; or

(vi) legislative general counsel in the case of testimony pursuant to subpoena before:

(A) the Legislature;

(B) either house of the Legislature; or

(C) a committee of the Legislature, including a joint committee, a committee of either house, a subcommittee, or a special investigative committee.

(b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to testify or provide evidence or information under a grant of use immunity, the prosecutor shall notify the witness by written notice. The notice shall include the information contained in Subsection (2) and advise the witness that the witness may not refuse to testify or provide evidence or information on the basis of the witness's privilege against self-incrimination. The notice need not be in writing when the grant of use immunity occurs on the record in the course of a preliminary hearing, grand jury proceeding, or trial.

(2) Testimony, evidence, or information compelled under Subsection (1) may not be used against the witness in any criminal or quasi-criminal case, nor any information directly or indirectly derived from this testimony, evidence, or information, unless the testimony, evidence, or information is volunteered by the witness or is otherwise not responsive to a question. Immunity does not extend to prosecution or punishment for perjury or to giving a false statement in connection with any testimony.

(3) If a witness is granted immunity under Subsection (1) and is later prosecuted for an offense that was part of the transaction or events about which the witness was compelled to testify or produce evidence or information under a grant of immunity, the burden is on the prosecution to show by a preponderance of the evidence that no use or derivative use was made of the compelled testimony, evidence, or information in the subsequent case against the witness, and to show that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information. The remedy for not establishing that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information is suppression of that evidence only.

(4) Nothing in this section prohibits or limits prosecutorial authority granted in Section 77-22-4.5.

(5) A county attorney within a prosecution district shall have the authority to grant immunity only as provided in Subsection 17-18a-402(3).

(6) For purposes of this section, "quasi-criminal" means only those proceedings that are determined by a court to be so far criminal in their nature that a defendant has a constitutional right against self-incrimination.

Amended by Chapter 1, 2013 Special Session 1

77-22b-2. Refusal of witness to testify or produce evidence or information.

(1) A witness who has been served with notice under Section 77-22b-1 and refuses to comply with the notice may be required to show cause before the district court why the witness should not be compelled to testify or otherwise produce evidence or information.

(2) If, after notice and hearing, the court finds that the witness should be compelled to testify or otherwise produce evidence or information, it shall order the witness to comply. If the witness then refuses to comply, the witness may be held in contempt of court.

Enacted by Chapter 296, 1997 General Session

77-23-101. Title of act.

Sections 77-23-101 through 77-23-105 may be cited as the "Administrative Traffic Checkpoint Act."

Enacted by Chapter 72, 1992 General Session

77-23-102. Definitions.

As used in this part:

(1) "Administrative traffic checkpoint" means a roadblock procedure where enforcement officers stop all, or a designated sequence of, motor vehicles traveling on highways and roads and subject those vehicles to inspection or testing and the drivers or occupants to questioning or the production of documents.

(2) "Command level officer" includes all sheriffs, heads of law enforcement agencies, and all supervisory enforcement officers of sergeant rank or higher.

(3) "Emergency circumstances" means circumstances where enforcement officers reasonably believe road conditions, weather conditions, or persons present a significant hazard to persons or the property of other persons.

(4) "Enforcement officer" includes:

(a) peace officers as defined in Title 53, Chapter 13, Peace Officer Classifications;

(b) correctional officers as defined in Title 53, Chapter 13;

(c) special function officers as defined and under the restrictions of Title 53, Chapter 13; and

(d) federal officers as defined in Title 53, Chapter 13.

(5) "Magistrate" includes all judicial officers enumerated in Subsection 77-1-3(4).

(6) "Motor vehicle" includes all vehicles as defined in Title 41, Chapter 1a.

Amended by Chapter 282, 1998 General Session

77-23-103. Circumstances permitting an administrative traffic checkpoint.

A motor vehicle may be stopped and the occupants detained by an enforcement officer when the enforcement officer:

(1) is acting pursuant to a duly authorized search warrant or arrest warrant;

(2) has probable cause to arrest or search;

(3) has reasonable suspicion that criminal activity has occurred or is occurring;

(4) is acting under emergency circumstances; or

(5) is acting pursuant to duly authorized administrative traffic checkpoint authority granted by a magistrate in accordance with Section 77-23-104.

Enacted by Chapter 72, 1992 General Session

77-23-104. Written plan -- Approval of magistrate.

(1) An administrative traffic checkpoint may be established and operated upon written authority of a magistrate.

(2) A magistrate may issue written authority to establish and operate an administrative traffic checkpoint if:

(a) a command level officer submits to the magistrate a written plan signed by the command level officer describing:

(i) the location of the checkpoint including geographical and topographical information;

(ii) the date, time, and duration of the checkpoint;

(iii) the sequence of traffic to be stopped;

(iv) the purpose of the checkpoint, including the inspection or inquiry to be conducted;

(v) the minimum number of personnel to be employed in operating the checkpoint, including the rank of the officer or officers in charge at the scene;

(vi) the configuration and location of signs, barriers, and other means of informing approaching motorists that they must stop and directing them to the place to stop;

(vii) any advance notice to the public at large of the establishment of the checkpoint; and

(viii) the instructions to be given to the enforcement officers operating the checkpoint;

(b) the magistrate makes an independent judicial determination that the plan appropriately:

(i) minimizes the length of time the motorist will be delayed;

(ii) minimizes the intrusion of the inspection or inquiry;

(iii) minimizes the fear and anxiety the motorist will experience;

(iv) minimizes the degree of discretion to be exercised by the individual enforcement officers operating the checkpoint; and

(v) maximizes the safety of the motorist and the enforcement officers; and

(c) the administrative traffic checkpoint has the primary purpose of inspecting, verifying, or detecting:

(i) drivers that may be under the influence of alcohol or drugs;

(ii) license plates, registration certificates, insurance certificates, or driver licenses;

(iii) violations of Title 23, Wildlife Resources Code of Utah; or

(iv) other circumstances that are specifically distinguishable by the magistrate from a general interest in crime control.

(3) Upon determination by the magistrate that the plan meets the requirements of Subsection (2), the magistrate shall sign the authorization and issue it to the command level officer, retaining a copy for the court's file.

(4) A copy of the plan and signed authorization shall be issued to the checkpoint command level officer participating in the operation of the checkpoint.

(5) Any enforcement officer participating in the operation of the checkpoint shall conform his activities as nearly as practicable to the procedures outlined in the plan.

(6) The checkpoint command level officer shall be available to exhibit a copy of the plan and signed authorization to any motorist who has been stopped at the checkpoint upon request of the motorist.

Amended by Chapter 168, 2001 General Session

77-23-104.5. Signs -- Prohibitions.

An enforcement officer may not display a sign that notifies motorists of an administrative traffic checkpoint unless the checkpoint is being operated under the authority of a magistrate as provided in Section 77-23-104.

Enacted by Chapter 168, 2001 General Session

77-23-105. Failure to stop -- Criminal liability.

Any person who intentionally and knowingly passes, without stopping as required, any administrative traffic checkpoint operated under the authority of a magistrate as provided in Section 77-23-104 is guilty of a class B misdemeanor.

Enacted by Chapter 72, 1992 General Session

77-23-205. Officer may request assistance.

An officer who is serving a search warrant may request other persons to assist in conducting the search.

Amended by Chapter 153, 2007 General Session

77-23-210. Force used in executing a search warrant -- When notice of authority is required as a prerequisite.

(1) When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may enter:

(a) if, after notice of the officer's authority and purpose, there is no response or the officer is not admitted with reasonable promptness; or

(b) without notice of the officer's authority and purpose as provided in Subsection (3).

(2) The officer executing the warrant under Subsection (1) may use only that force which is reasonable and necessary to execute the warrant.

(3) (a) The officer shall identify himself or herself and state the purpose of entering the premises as soon as practicable.

(b) The officer may enter without notice only if:

(i) there is reason to believe the notice will endanger the life or safety of the officer or another person;

(ii) there is probable cause to believe that evidence may be easily or quickly secreted or destroyed; or

(iii) the magistrate, having found probable cause based upon proof provided under oath, that the object of the search may be easily or quickly secreted or destroyed, or having found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under Rule 40, Rules of Criminal Procedure.

(4) (a) The officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or invasive methods which may result in harm to any person.

(b) The officer shall minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with a particularized description in the search warrant, including such factors as the type of structure, the color, the address, and orientation of the target property in relation to nearby structures as is reasonably necessary.

Amended by Chapter 297, 2014 General Session

77-23-301. Warrantless searches regarding persons on parole.

(1) An inmate who is eligible for release on parole shall, as a condition of parole, sign an agreement as described in Subsection (2) that the inmate, while on parole, is subject to search or seizure of the inmate's person, property, place of temporary or permanent residence, vehicle, or personal effects while on parole:

(a) by a parole officer at any time, with or without a search warrant, and with or without cause; and

(b) by a law enforcement officer at any time, with or without a search warrant, and with or without cause, but subject to Subsection (3).

(2) (a) The terms of the agreement under Subsection (1) shall be stated in clear and unambiguous language.

(b) The agreement shall be signed by the parolee, indicating the parolee's understanding of the terms of searches as allowed by Subsection (1).

(3) (a) In order for a law enforcement officer to conduct a search of a parolee's residence under Subsection (1) or a seizure pursuant to the search, the law enforcement officer shall have obtained prior approval from a parole officer or shall have a warrant for the search.

(b) If a law enforcement officer conducts a search of a parolee's person, personal effects, or vehicle pursuant to a stop, the law enforcement officer shall notify a parole officer as soon as reasonably possible after conducting the search.

(4) A search conducted under this section may not be for the purpose of harassment.

(5) Any inmate who does not agree in writing to be subject to search or seizure under Subsection (1) may not be paroled until the inmate enters into the agreement under Subsection (1).

(6) This section applies only to an inmate who is eligible for release on parole on or after May 5, 2008.

Enacted by Chapter 357, 2008 General Session

77-23a-1. Short title.

This act shall be known and may be cited as the "Interception of Communications Act."

Enacted by Chapter 15, 1980 General Session

77-23a-2. Legislative findings.

The Legislature finds and determines that:

(1) Wire communications are normally conducted through facilities which form part of an interstate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the legislature to define the circumstances and conditions under which the interception of wire and oral communications may be authorized and to prohibit any unauthorized interception of these communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire or oral communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire and oral communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

Enacted by Chapter 15, 1980 General Session

77-23a-3. Definitions.

As used in this chapter:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or oral communication, or a person against whom the interception was directed.

(2) "Aural transfer" means any transfer containing the human voice at any point between and including the point of origin and the point of reception.

(3) "Communications common carrier" means any person engaged as a common carrier for hire in intrastate, interstate, or foreign communication by wire or radio, including a provider of electronic communication service. However, a person engaged in radio broadcasting is not, when that person is so engaged, a communications common carrier.

(4) "Contents" when used with respect to any wire, electronic, or oral communication includes any information concerning the substance, purport, or meaning

of that communication.

(5) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include:

(a) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(b) any wire or oral communications;

(c) any communication made through a tone-only paging device; or

(d) any communication from an electronic or mechanical device that permits the tracking of the movement of a person or object.

(6) "Electronic communications service" means any service that provides for users the ability to send or receive wire or electronic communications.

(7) "Electronic communications system" means any wire, radio, electromagnetic, photoelectronic, or photo-optical facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(8) "Electronic, mechanical, or other device" means any device or apparatus that may be used to intercept a wire, electronic, or oral communication other than:

(a) any telephone or telegraph instrument, equipment or facility, or a component of any of them:

(i) furnished by the provider of wire or electronic communications service or by the subscriber or user, and being used by the subscriber or user in the ordinary course of its business; or

(ii) being used by a provider of wire or electronic communications service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(9) "Electronic storage" means:

(a) any temporary intermediate storage of a wire or electronic communication incident to the electronic transmission of it; and

(b) any storage of the communication by an electronic communications service for the purposes of backup protection of the communication.

(10) "Intercept" means the acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(11) "Investigative or law enforcement officer" means any officer of the state or of a political subdivision, who by law may conduct investigations of or make arrests for offenses enumerated in this chapter, or any federal officer as defined in Section 53-13-106, and any attorney authorized by law to prosecute or participate in the prosecution of these offenses.

(12) "Judge of competent jurisdiction" means a judge of a district court of the state.

(13) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation, but does not include any electronic

communication.

(14) "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached. "Pen register" does not include any device used by a provider or customer of a wire or electronic communication service for billing or recording as an incident to billing, for communications services provided by the provider, or any device used by a provider or customer of a wire communications service for cost accounting or other like purposes in the ordinary course of its business.

(15) "Person" means any employee or agent of the state or a political subdivision, and any individual, partnership, association, joint stock company, trust, or corporation.

(16) "Readily accessible to the general public" means, regarding a radio communication, that the communication is not:

(a) scrambled or encrypted;

(b) transmitted using modulation techniques with essential parameters that have been withheld from the public with the intention of preserving the privacy of the communication;

(c) carried on a subcarrier or signal subsidiary to a radio transmission;

(d) transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(e) transmitted on frequencies allocated under Part 25, Subpart D, E, or F of Part 74, or Part 94, Rules of the Federal Communications Commission unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

(17) "Trap and trace device" means a device, process, or procedure that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication is transmitted.

(18) "User" means any person or entity who:

(a) uses an electronic communications service; and

(b) is authorized by the provider of the service to engage in the use.

(19) (a) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of the connection in a switching station, furnished or operated by any person engaged as a common carrier in providing or operating these facilities for the transmission of intrastate, interstate, or foreign communications.

(b) "Wire communication" includes the electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

Amended by Chapter 282, 1998 General Session

77-23a-4. Offenses -- Criminal and civil -- Lawful interception.

(1) (a) Except as otherwise specifically provided in this chapter, any person who violates Subsection (1)(b) is guilty of an offense and is subject to punishment under

Subsection (10), or when applicable, the person is subject to civil action under Subsection (11).

(b) A person commits a violation of this subsection who:

(i) intentionally or knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;

(ii) intentionally or knowingly uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication, when the device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication or when the device transmits communications by radio, or interferes with the transmission of the communication;

(iii) intentionally or knowingly discloses or endeavors to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section; or

(iv) intentionally or knowingly uses or endeavors to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section.

(2) The operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire communication may intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service. However, a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(3) (a) Providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other persons may provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance if the provider and its officers, employees, or agents, and any landlords, custodians, or other specified persons have been provided with:

(i) a court order directing the assistance signed by the authorizing judge; or

(ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by the attorney general or an assistant attorney general, or by a county attorney or district attorney or his deputy that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.

(b) The order or certification under this subsection shall set the period of time during which the provision of the information, facilities, or technical assistance is authorized and shall specify the information, facilities, or technical assistance required.

(4) (a) The providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other specified persons may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance regarding which the person has been

furnished an order or certification under this section except as is otherwise required by legal process, and then only after prior notification to the attorney general or to the county attorney or district attorney of the county in which the interception was conducted, as is appropriate.

(b) Any disclosure in violation of this subsection renders the person liable for civil damages under Section 77-23a-11.

(5) A cause of action does not lie in any court against any provider of wire or electronic communications service, its officers, employees, or agents, or any landlords, custodians, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.

(6) Subsections (3), (4), and (5) supersede any law to the contrary.

(7) (a) A person acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

(b) A person not acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.

(c) An employee of a telephone company may intercept a wire communication for the sole purpose of tracing the origin of the communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The telephone company and its officers, employees, and agents shall release the results of the interception, made under this subsection, upon request of the local law enforcement authorities.

(8) A person may:

(a) intercept or access an electronic communication made through an electronic communications system that is configured so that the electronic communication is readily accessible to the general public;

(b) intercept any radio communication transmitted by:

(i) any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(ii) any government, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(iii) a station operating on an authorized frequency within the bands allocated to the amateur, citizens' band, or general mobile radio services; or

(iv) by a marine or aeronautics communications system;

(c) intercept any wire or electronic communication, the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference; or

(d) as one of a group of users of the same frequency, intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.

(9) (a) Except under Subsection (9)(b), a person or entity providing an electronic communications service to the public may not intentionally divulge the contents of any communication, while in transmission of that service, to any person or entity other than an addressee or intended recipient of the communication or his agent.

(b) A person or entity providing electronic communications service to the public may divulge the contents of any communication:

(i) as otherwise authorized under this section or Section 77-23a-9;

(ii) with lawful consent of the originator or any addressee or intended recipient of the communication;

(iii) to a person employed or authorized or whose facilities are used to forward the communication to its destination; or

(iv) that is inadvertently obtained by the service provider and appears to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.

(10) (a) Except under Subsection (10)(b) or (11), a violation of Subsection (1) is a third degree felony.

(b) If the offense is a first offense under this section and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication regarding which the offense was committed is a radio communication that is not scrambled or encrypted:

(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or paging service communication, and the conduct is not under Subsection (11), the offense is a class A misdemeanor; and

(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offense is a class B misdemeanor.

(c) Conduct otherwise an offense under this section is not an offense if the conduct was not done for the purpose of direct or indirect commercial advantage or private financial gain, and consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled, and is either transmitted:

(i) to a broadcasting station for purposes of retransmission to the general public; or

(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but in any event not including data transmissions or telephone calls.

(11) (a) A person is subject to civil suit initiated by the state in a court of competent jurisdiction when his conduct is prohibited under Subsection (1) and the conduct involves a:

(i) private satellite video communication that is not scrambled or encrypted, and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(ii) radio communication that is transmitted on frequencies allocated under Subpart D, Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(b) In an action under Subsection (11)(a):

(i) if the violation of this chapter is a first offense under this section and the person is not found liable in a civil action under Section 77-23a-11, the state may seek appropriate injunctive relief; or

(ii) if the violation of this chapter is a second or subsequent offense under this section, or the person has been found liable in any prior civil action under Section 77-23a-11, the person is subject to a mandatory $500 civil penalty.

(c) The court may use any means within its authority to enforce an injunction issued under Subsection (11)(b)(i), and shall impose a civil fine of not less than $500 for each violation of the injunction.

Amended by Chapter 340, 2011 General Session

77-23a-4.5. Implanting an electronic identification device -- Penalties.

(1) A person may not require, coerce, or compel any other individual to undergo or submit to the subcutaneous implanting of a radio frequency identification tag.

(2) Any person who violates Subsection (1) is guilty of a class A misdemeanor.

(3) (a) A person who is implanted with a subcutaneous identification device in violation of Subsection (1) may bring a civil action in any court of competent jurisdiction for actual damages, compensatory damages, punitive damages, injunctive relief, or any combination of these.

(b) The initial civil penalty may not be more than $10,000, and no more than $1,000 for each day the violation continues until the electronic identification device is removed or disabled.

Enacted by Chapter 168, 2011 General Session

77-23a-5. Traffic in intercepting devices -- Offenses -- Lawful activities.

(1) Except as otherwise specifically provided in this chapter, any person is guilty of a third degree felony who intentionally:

(a) sends through the mail, or sends or carries in intrastate, interstate, or foreign commerce any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications; or

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of:

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications; or

(ii) any other electronic, mechanical, or other device, where the advertisement promotes the use of the device for the purpose of the surreptitious interception of wire, electronic, or oral communications.

(2) The following persons may send through the mail, send or carry in intrastate, interstate, or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of surreptitious interception of wire, electronic, or oral communication:

(a) a provider in the normal course of the business of providing that wire or electronic communications service; or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a state, or a political subdivision, in the normal course of the activities of the United States, a state, or a political subdivision.

Amended by Chapter 122, 1989 General Session

77-23a-6. Seizure and forfeiture of intercepting devices.

Any electronic, mechanical or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of Sections 77-23a-4 and 77-23a-5, may be seized and forfeited to the State of Utah.

Enacted by Chapter 15, 1980 General Session

77-23a-7. Evidence -- Exclusionary rule.

When any wire, electronic, or oral communication has been intercepted, no part of the contents of the communication and no evidence derived from it may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision of the state, if the disclosure of that information would be in violation of this chapter.

Amended by Chapter 251, 1988 General Session

77-23a-8. Court order to authorize or approve interception -- Procedure.

(1) The attorney general of the state, any assistant attorney general specially designated by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy district attorney specially designated by the county attorney or by the district attorney, may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state that is responsible for investigating the type of offense for which the application is made.

(2) The judge may grant the order in conformity with the required procedures when the interception sought may provide or has provided evidence of the commission of:

(a) any act:

(i) prohibited by the criminal provisions of:

(A) Title 58, Chapter 37, Utah Controlled Substances Act;

(B) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) punishable by a term of imprisonment of more than one year;

(b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act and punishable by a term of imprisonment of more than one year;

(c) an offense:

(i) of:

(A) attempt, Section 76-4-101;

(B) conspiracy, Section 76-4-201;

(C) solicitation, Section 76-4-203; and

(ii) punishable by a term of imprisonment of more than one year;

(d) a threat of terrorism offense punishable by a maximum term of imprisonment of more than one year, Section 76-5-107.3;

(e) (i) aggravated murder, Section 76-5-202;

(ii) murder, Section 76-5-203; or

(iii) manslaughter, Section 76-5-205;

(f) (i) kidnapping, Section 76-5-301;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302;

(iv) human trafficking or human smuggling, Section 76-5-308; or

(v) aggravated human trafficking or aggravated human smuggling, Section 76-5-310;

(g) (i) arson, Section 76-6-102; or

(ii) aggravated arson, Section 76-6-103;

(h) (i) burglary, Section 76-6-202; or

(ii) aggravated burglary, Section 76-6-203;

(i) (i) robbery, Section 76-6-301; or

(ii) aggravated robbery, Section 76-6-302;

(j) an offense:

(i) of:

(A) theft, Section 76-6-404;

(B) theft by deception, Section 76-6-405; or

(C) theft by extortion, Section 76-6-406; and

(ii) punishable by a maximum term of imprisonment of more than one year;

(k) an offense of receiving stolen property that is punishable by a maximum term of imprisonment of more than one year, Section 76-6-408;

(l) a financial card transaction offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-506.2, 76-6-506.3, 76-6-506.5, or 76-6-506.6;

(m) bribery of a labor official, Section 76-6-509;

(n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;

(o) a criminal simulation offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-518;

(p) criminal usury, Section 76-6-520;

(q) a fraudulent insurance act offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-521;

(r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by a maximum term of imprisonment of more than one year, Section 76-6-703;

(s) bribery to influence official or political actions, Section 76-8-103;

(t) misusing public money, Section 76-8-402;

(u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;

(v) retaliation against a witness, victim, or informant, Section 76-8-508.3;

(w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;

(x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

(y) obstruction of justice, Section 76-8-306;

(z) destruction of property to interfere with preparation for defense or war, Section 76-8-802;

(aa) an attempt to commit crimes of sabotage, Section 76-8-804;

(bb) conspiracy to commit crimes of sabotage, Section 76-8-805;

(cc) advocating criminal syndicalism or sabotage, Section 76-8-902;

(dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

(ee) riot punishable by a maximum term of imprisonment of more than one year, Section 76-9-101;

(ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a maximum term of imprisonment of more than one year, Section 76-9-301.1;

(gg) possession, use, or removal of an explosive, chemical, or incendiary device and parts, Section 76-10-306;

(hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary device, Section 76-10-307;

(ii) exploiting prostitution, Section 76-10-1305;

(jj) aggravated exploitation of prostitution, Section 76-10-1306;

(kk) bus hijacking, assault with intent to commit hijacking, dangerous weapon or firearm, Section 76-10-1504;

(ll) discharging firearms and hurling missiles, Section 76-10-1505;

(mm) violations of the Pattern of Unlawful Activity Act and the offenses listed under the definition of unlawful activity in the act, including the offenses not punishable by a maximum term of imprisonment of more than one year when those offenses are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;

(nn) communications fraud, Section 76-10-1801;

(oo) money laundering, Sections 76-10-1903 and 76-10-1904; or

(pp) reporting by a person engaged in a trade or business when the offense is punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

Amended by Chapter 196, 2013 General Session

77-23a-9. Disclosure or use of intercepted information.

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic, or oral communication, or evidence derived from any of these, may disclose those contents to

another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived from any of them may use those contents to the extent the use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic, or oral communication or evidence derived from any of them intercepted in accordance with this chapter may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any state or political subdivision.

(4) An otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter does not lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents, and evidence derived from the contents, may be disclosed or used as provided in Subsections (1) and (2). The contents and any evidence derived from them may be used under Subsection (3) when authorized or approved by a judge of competent jurisdiction, if the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this chapter. The application shall be made as soon as practicable.

Amended by Chapter 251, 1988 General Session

77-23a-10. Application for order -- Authority of order -- Emergency action -- Application -- Entry -- Conditions -- Extensions -- Recordings -- Admissibility or suppression -- Appeal by state.

(1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing, upon oath or affirmation to a judge of competent jurisdiction, and shall state the applicant's authority to make the application. Each application shall include:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including:

(i) details regarding the particular offense that has been, is being, or is about to be committed;

(ii) except as provided in Subsection (12), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communication sought to be intercepted; and

(iv) the identity of the person, if known, committing the offense and whose communication is to be intercepted;

(c) a full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained, and if the investigation is of a nature that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and the individual making the application, made to any judge for authorization to intercept, or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each application;

(f) when the application is for the extension of an order, a statement setting forth the results so far obtained from the interception, or a reasonable explanation of the failure to obtain results; and

(g) additional testimony or documentary evidence in support of the application as the judge may require.

(2) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications within the territorial jurisdiction of the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense under Section 77-23a-8;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or too dangerous; and

(d) except as provided in Subsection (12), there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by that person.

(3) Each order authorizing or approving the interception of any wire, electronic, or oral communications shall specify:

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) except as provided in Subsection (12), the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications and of

the persons authorizing the application; and

(e) the period of time during which the interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communications has been first obtained.

(4) An order authorizing the interception of a wire, electronic, or oral communications shall, upon request of the applicant, direct that a provider of wire or electronic communications service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communications service, landlord, custodian, or other person furnishing the facilities or technical assistance shall be compensated by the applicant for reasonable expenses involved in providing the facilities or systems.

(5) (a) An order entered under this chapter may not authorize or approve the interception of any wire, electronic, or oral communications for any period longer than is necessary to achieve the objective of the authorization, but in any event for no longer than 30 days. The 30-day period begins on the day the investigative or law enforcement officer first begins to conduct an interception under the order, or 10 days after the order is entered, whichever is earlier.

(b) Extensions of an order may be granted, but only upon application for an extension made under Subsection (1) and if the court makes the findings required by Subsection (2). The period of extension may be no longer than the authorizing judge considers necessary to achieve the purposes for which it was granted, but in no event for longer than 30 days.

(c) Every order and extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event within 30 days.

(d) If the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, the minimizing of the interception may be accomplished as soon as practicable after the interception.

(e) An interception under this chapter may be conducted in whole or in part by government personnel or by an individual under contract with the government and acting under supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) When an order authorizing interception is entered under this chapter, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. These reports shall be made at intervals the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer who is specially designated by either the attorney general or a county attorney or district attorney, as provided under Sections 17-18a-202 and

17-18a-203 may intercept wire, electronic, or oral communications if an application for an order approving the interception is made in accordance with this section and within 48 hours after the interception has occurred or begins to occur, when the investigative or law enforcement officer reasonably determines that:

(a) an emergency situation exists that involves:

(i) immediate danger of death or serious physical injury to any person;

(ii) conspiratorial activities threatening the national security interest; or

(iii) conspiratorial activities characteristic of organized crime, that require a wire, electronic, or oral communications to be intercepted before an order authorizing interception can, with diligence, be obtained; and

(b) there are grounds upon which an order could be entered under this chapter to authorize the interception.

(8) (a) In the absence of an order under Subsection (7), the interception immediately terminates when the communication sought is obtained or when the application for the order is denied, whichever is earlier.

(b) If the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic, or oral communications intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in Subsection (9)(d) on the person named in the application.

(9) (a) The contents of any wire, electronic, or oral communications intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communications under this Subsection (9)(a) shall be done so as to protect the recording from editing or other alterations. Immediately upon the expiration of the period of an order or extension, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be where the judge orders. The recordings may not be destroyed, except upon an order of the issuing or denying judge. In any event, it shall be kept for 10 years. Duplicate recordings may be made for use or disclosure under Subsections 77-23a-9(1) and (2) for investigations. The presence of the seal provided by this Subsection (9)(a), or a satisfactory explanation for the absence of one, is a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communications or evidence derived from it under Subsection 77-23a-9(3).

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and may not be destroyed, except on order of the issuing or denying judge. But in any event they shall be kept for 10 years.

(c) Any violation of any provision of this Subsection (9) may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time, but not later than 90 days after the filing of an application for an order of approval under Subsection 77-23a-10(7) that is denied or the termination of the period of an order or extensions, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and other parties to the intercepted communications as the judge determines in his discretion is in

the interest of justice, an inventory, which shall include notice:

(i) of the entry of the order or application;

(ii) of the date of the entry and the period of authorization, approved or disapproved interception, or the denial of the application; and

(iii) that during the period, wire, electronic, or oral communications were or were not intercepted.

(e) The judge, upon filing of a motion, may in the judge's discretion, make available to the person or the person's counsel for inspection the portions of the intercepted communications, applications, and orders the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this Subsection (9)(e) may be postponed.

(10) The contents of any intercepted wire, electronic, or oral communications, or evidence derived from any of these, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(11) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, the state, or a political subdivision may move to suppress the contents of any intercepted wire, electronic, or oral communications, or evidence derived from any of them, on the grounds that:

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

(b) The motion shall be made before the trial, hearing, or proceeding, unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communications, or evidence derived from any of these, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved person, may in the judge's discretion make available to the aggrieved person or the aggrieved person's counsel for inspection portions of the intercepted communication or evidence derived from the intercepted communication as the judge determines to be in the interests of justice.

(c) In addition to any other right to appeal, the state or its political subdivision may appeal from an order granting a motion to suppress made under Subsection (11)(a), or the denial of an application for an order of approval, if the attorney bringing the appeal certifies to the judge or other official granting the motion or denying the application that the appeal is not taken for the purposes of delay. The appeal shall be taken within 30 days after the date the order was entered and shall be diligently

prosecuted.

(12) The requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) relating to the specification of the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted do not apply if:

(a) in the case of an applicant regarding the interception of oral communications:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application contains a full and complete statement of why the specification is not practical, and identifies the person committing the offense and whose communications are to be intercepted; or

(iii) the judge finds that the specification is not practical; and

(b) in the case of an application regarding wire or electronic communications:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that the purpose has been adequately shown.

(13) (a) An interception of a communication under an order regarding which the requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) do not apply by reason of Subsection (12) does not begin until the facilities from which, or the place where, the communications are to be intercepted is ascertained by the person implementing the interception order.

(b) A provider of wire or electronic communications service that has received an order under Subsection (12)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide the motion expeditiously.

Amended by Chapter 237, 2013 General Session

77-23a-11. Civil remedy for unlawful interception -- Action for relief.

(1) Except under Subsections 77-23a-4(3), (4), and (5), a person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover relief as appropriate from the person or entity that engaged in the violation.

(2) In an action under this section appropriate relief includes:

(a) preliminary and other equitable or declaratory relief as is appropriate;

(b) damages under Subsection (3) and punitive damages in appropriate cases; and

(c) a reasonable attorney's fee and reasonably incurred litigation costs.

(3) (a) In an action under this section, if the conduct in violation of this chapter is

the private viewing of a private satellite video communication that is not scrambled or encrypted, or if the communication is a radio communication that is transmitted on frequencies allocated under Subpart (D), Part 74, Rules of the Federal Communications Commission, that is not scrambled or encrypted, and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, the court shall assess damages as follows:

(i) if the person who engaged in the conduct has not previously been enjoined under Subsection 77-23a-4(11) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or the statutory damages of not less than $50 nor more than $500;

(ii) if on one prior occasion the person who engaged in the conduct has been enjoined under Subsection 77-23a-4(11) or has been liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1,000;

(b) in any other action under this section, the court may assess as damages whichever is the greater of:

(i) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violations; or

(ii) statutory damages of $100 a day for each day of violation, or $10,000, whichever is greater.

(4) A good faith reliance on any of the following is a complete defense against any civil or criminal action brought under this chapter or any other law:

(a) a court order, a warrant, a grand jury subpoena, a legislative authorization, or a statutory authorization;

(b) a request of an investigative or law enforcement officer under Subsection 77-23a-10 (7); or

(c) a good faith determination that Section 77-23a-4 permitted the conduct complained of.

(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

(6) The remedies and sanctions described in this chapter regarding the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving these communications.

Amended by Chapter 122, 1989 General Session

77-23a-12. Enjoining a violation -- Civil action by attorney general.

(1) When it appears that a person is engaged or is about to engage in any act that constitutes or will constitute a felony violation of this chapter or is otherwise prohibited by this chapter, the attorney general may initiate a civil action in a district court of the state to enjoin the violation.

(2) The court shall proceed as soon as practicable to the hearing and determination of the action and may at any time before final determination enter a restraining order or prohibition, or take other action as warranted to prevent a

continuing and substantial injury to the state or to any person or class of persons for whose protection the action is brought.

(3) A proceeding under this section is governed by the Utah Rules of Civil Procedure, except if an information has been filed or an indictment has been returned against the respondent, discovery is governed by the Utah Rules of Criminal Procedure.

Amended by Chapter 122, 1989 General Session

77-23a-13. Installation of device when court order required -- Penalty.

(1) Except as provided in this section, a person may not install or use a pen register or trap or trace device without previously obtaining a court order under Section 77-23a-15, or under federal law.

(2) Subsection (1) does not apply to the use of a pen register or trap and trace device by a provider of electronic or wire communications services:

(a) relating to the operation, maintenance, and testing of a wire or electronic communications service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(b) to record that a wire or electronic communication was initiated or completed to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service from fraudulent, unlawful, or abusive use of that service; or

(c) when the consent of the user of that service has been obtained.

(3) A knowing or intentional violation of Subsection (1) is a class B misdemeanor.

Amended by Chapter 241, 1991 General Session

77-23a-14. Court order for installation -- Application.

(1) The attorney general, a deputy attorney general, a county attorney or district attorney, a deputy county attorney or deputy district attorney, or a prosecuting attorney for a political subdivision of the state, or a law enforcement officer, may make application for an order or extension of an order under Section 77-23a-15 authorizing or approving the installation and use of a pen register or trap and trace device, in writing and under oath or equivalent affirmation, to a court of competent jurisdiction.

(2) An application under Subsection (1) shall include:

(a) the identity of the attorney for the government or the law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(b) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

Amended by Chapter 38, 1993 General Session

77-23a-15. Order for installation -- Contents -- Duration -- Extension -- Disclosure.

(1) In general, upon an application made under Section 77-23a-14, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the attorney for the government or the law enforcement or investigative officer has certified to the court that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

(2) (a) An order issued under this section shall specify:

(i) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

(ii) the identity, if known, of the person who is the subject of the criminal investigation;

(iii) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographical limits of the trap and trace order; and

(iv) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(b) The order shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under Section 77-23a-16.

(3) (a) An order issued under this section may authorize the installation and use of a pen register or trap and trace device for a period not to exceed 60 days.

(b) Extensions of an order may be granted, but only upon an application for an order under Section 77-23a-14 and upon the judicial finding required by Subsection (1). The period of extension shall be for a period not to exceed 60 days.

(4) An order authorizing or approving the installation and use of a pen register or trap and trace device shall direct that:

(a) the order be sealed until otherwise ordered by the court; and

(b) the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless otherwise ordered by the court.

Enacted by Chapter 251, 1988 General Session

77-23a-16. Communications provider -- Cooperation and support services -- Compensation -- Liability defense.

(1) Upon the request of an attorney for the government or an officer of a law enforcement agency authorized to install and use pen registers under this chapter, a provider of wire or electronic communications service, landlord, custodian, or other person shall furnish investigative or law enforcement officers forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services the person ordered by the court accords the party regarding whom the installation and use is to take place, if such assistance is directed by a court order as provided in Subsection

77-23a-15(2)(b) of this chapter.

(2) (a) Upon request of an attorney for the government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of wire or electronic communications service, landlord, custodian, or other person shall install the device forthwith on the appropriate line.

(b) He shall also furnish the investigative or law enforcement officer all additional information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by a court order under Section 77-23a-15(2)(b).

(c) Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of the law enforcement agency designated by the court, at reasonable intervals and during regular business hours, for the duration of the order.

(3) A provider of wire or electronic communications service, landlord, custodian, or other person who furnishes facilities or technical assistance under this section shall be reasonably compensated for reasonable expenses incurred in providing the facilities and assistance.

(4) A cause of action does not lie in any court against the provider of wire or electronic communications service, its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization, is a complete defense against any civil or criminal action brought under this chapter or any other law.

Enacted by Chapter 251, 1988 General Session

77-23b-1. Definitions.

(1) As used in this chapter, "remote computing service" means provision to the public of computer storage or processing services by means of an electronic communications system.

(2) The definitions of terms in Section 77-23a-3 apply to this chapter.

Amended by Chapter 122, 1989 General Session

77-23b-2. Interference with access to stored communication -- Offenses -- Penalties.

(1) Except under Subsection (3), a person who obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in the system shall be punished under Subsection (2) if he:

(a) intentionally accesses without authorization a facility through which an electronic communications service is provided; or

(b) intentionally exceeds an authorization to access that facility.

(2) A person who commits a violation of Subsection (1) is:

(a) if the offense is committed for purposes of commercial advantage, malicious destruction, or damage, or private commercial gain, guilty of a:

(i) third degree felony for the first offense under this subsection; and

(ii) second degree felony for any subsequent offense; and

(b) class B misdemeanor in any other case.

(3) Subsection (1) does not apply to conduct authorized:

(a) by the person or entity providing a wire or electronic communications service;

(b) by a user of that service with respect to a communication of or intended for that user; or

(c) under Sections 77-23a-10, 77-23b-4, and 77-23b-5.

Amended by Chapter 241, 1991 General Session

77-23b-3. Revealing stored electronic communication -- Prohibitions -- Penalties.

(1) Except under Subsection (2):

(a) the person or entity providing an electronic communications service to the public may not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(b) a person or entity providing a remote computing service to the public may not knowingly divulge to any person or entity the contents of any communication that is carried or maintained on that service:

(i) on behalf of and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from a subscriber or customer of the service; and

(ii) solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the provider is not authorized to access the contents of any communications for the purpose of providing any services other than storage or computer processing.

(2) A person or entity may divulge the contents of a communication:

(a) to an addressee or intended recipient of the communication or an agent of the addressee or intended recipient;

(b) as otherwise authorized under Section 77-23a-4, 77-23a-8, or 77-23b-4;

(c) with the lawful consent of the originator or addressee or intended recipient of the communication, or the subscriber in the case of remote computing service;

(d) to a person employed or authorized, or whose facilities are used to forward the communication to its destination;

(e) as may be necessarily incident to the rendition of the service or the protection of the rights or property of the provider of that service; or

(f) to a law enforcement agency, if the contents:

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a criminal offense.

Amended by Chapter 122, 1989 General Session

77-23b-4. Disclosure by a provider -- Grounds for requiring disclosure --

Court order.

(1) A government entity may only require the disclosure by a provider of electronic communication services of the contents of an electronic communication that is in electronic storage in an electronic communication system pursuant to a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant.

(2) Subsection (1) applies to any electronic communication that is held or maintained on that service:

(a) on behalf of and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from a subscriber or customer of the remote computing service; and

(b) solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the provider is not authorized to access the contents of any communication for purposes of providing any services other than storage or computer processing.

(3) (a) (i) Except under Subsection (3)(a)(ii), a provider of electronic communication services or remote computing services may disclose a record or other information pertaining to a subscriber to or customer of the service, not including the contents of communication covered by Subsection (1), to any person other than a governmental agency.

(ii) A provider of electronic communication services or remote computing services shall disclose a record or other information pertaining to a subscriber to or customer of the service, not including the contents of communication covered by Subsection (1), to a governmental entity only when the entity:

(A) uses an administrative subpoena authorized by a state or federal statute or a state or federal grand jury subpoena;

(B) obtains a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant;

(C) obtains a court order for the disclosure under Subsection (4); or

(D) has the consent of the subscriber or customer to the disclosure.

(b) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(4) (a) A court order for disclosure under this section may be issued only if the governmental entity shows there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry.

(b) A court issuing an order under this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with the order otherwise would cause an undue burden on the provider.

(5) A cause of action may not be brought in any court against any provider of wire or electronic communications services, its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

Amended by Chapter 115, 2012 General Session

77-23b-5. Backup copy of communications -- When required of provider -- Court order -- Procedures.

(1) (a) A governmental entity acting under Subsection 77-23b-4(2)(b) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of the subpoena or court order, the service provider shall create the backup as soon as practicable, consistent with its regular business practices. The provider shall also confirm to the governmental entity that the backup copy has been made. The backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

(b) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of confirmation, unless the notice is delayed under Subsection 77-23b-6 (1).

(c) The service provider may not destroy the backup copy until the later of:

(i) the delivery of the information; or

(ii) the resolution of any proceedings, including appeals of any proceeding, concerning the government's subpoena or court order.

(d) The service provider shall release the backup copy to the requesting governmental entity no sooner than 14 days after the governmental entity's notice to the subscriber or customer, if the service provider:

(i) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

(ii) has not initiated proceedings to challenge the request of the governmental entity.

(e) A governmental entity may seek to require the creation of a backup copy under Subsection (1)(a) if in its sole discretion the entity determines that there is reason to believe that notification under Section 77-23b-4 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber, customer, or service provider.

(2) (a) Within 14 days after notice by the governmental entity to the subscriber or customer under Subsection (1)(b), the subscriber or customer may file a motion to quash the subpoena or vacate the court order, with copies served upon the governmental entity, and with written notice of the challenge to the service provider. A motion to vacate a court order shall be filed in the court that issues the order. A motion to quash a subpoena shall be filed in the appropriate district court. The motion or application shall contain an affidavit or sworn statement:

(i) that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

(ii) that the applicant's reason for believing the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

(b) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice the customer received under this chapter. For purposes of this subsection, "deliver" has the same meaning as under the Utah

Rules of Criminal Procedure.

(c) If the court finds that the customer has complied with Subsections (2)(a) and (b), the court shall order the governmental entity to file a sworn response, that may be filed in camera if the governmental entity includes in its response the reasons making in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct additional proceedings as it considers appropriate. All proceedings shall be completed, and the motion or application decided, as soon as practicable after the filing of the governmental entity's response.

(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order the process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is no reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with this chapter, it shall order the process quashed.

(e) A court order denying a motion or application under this section is not considered a final order, and no interlocutory appeal may be taken from it by the customer or subscriber.

Enacted by Chapter 251, 1988 General Session

77-23b-6. Notifying subscriber or customer of court order -- Requested delay -- Grounds -- Limits.

(1) (a) The governmental entity acting under Section 77-23b-4 may:

(i) if a court order is sought, include in the application a request for an order delaying notification to the subscriber for not to exceed 90 days and, if the court determines there is reason to believe that notification of existence of the court order may have an adverse result, the court shall grant the order; or

(ii) if an administrative subpoena authorized by a state or federal statute or a state or federal grand jury subpoena is obtained, delay notification to the subscriber for not to exceed 90 days, upon the execution of a written certification of a supervisory official that there is reason to believe that the notification of the existence of the subpoena may have an adverse result.

(b) An adverse result is:

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) The governmental entity shall maintain a true copy of certification under Subsection (1)(a)(ii).

(d) Extensions of the delay of notification under Section 77-23b-4 of up to 90 days each, may be granted by the court upon application, or by certification by a

governmental entity, but only in accordance with Subsection (2).

(e) On expiration of the period of delay of notification under Subsection (1)(a) or (d), the governmental entity shall serve upon, or deliver by registered or first class mail, to the customer or subscriber a copy of the process or request together with a notice:

(i) stating with reasonable specificity the nature of the law enforcement inquiry; and

(ii) informing the customer or subscriber:

(A) that information maintained for the customer or subscriber by the service provider named in the process or request was supplied to or requested by that governmental authority and the date the supplying or request took place;

(B) that notification of the customer or subscriber was delayed;

(C) which governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) which provision of this chapter allows the delay.

(f) As used in this subsection, "supervisory official" means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigative agency's headquarters or regional office; a county sheriff or chief deputy sheriff, or police chief or assistant police chief; the officer in charge of an investigative task force or the assistant officer in charge; or the attorney general, an assistant attorney general, a county attorney or district attorney, a deputy county attorney or deputy district attorney, or the chief prosecuting attorney of any political subdivision of the state.

(2) A governmental entity acting under Section 77-23b-4, when not required to notify the subscriber or customer, or to the extent that it may delay notice under Subsection (1), may apply to a court for an order commanding the provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for a period of time the court considers appropriate, to not notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter the order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in:

(a) endangering the life or physical safety of an individual;

(b) flight from prosecution;

(c) destruction of or tampering with evidence;

(d) intimidation of potential witnesses; or

(e) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Amended by Chapter 115, 2012 General Session

77-23b-7. Fee for services of provider of information.

(1) (a) Except as otherwise provided in Subsection (3), a governmental entity obtaining the contents of communications, records, or other information under Section 77-23b-4 or 77-23b-5 shall pay to the person or entity assembling or providing the information a reimbursement fee for the costs reasonably necessary and directly incurred in searching for, assembling, reproducing, or otherwise providing the information.

(b) The reimbursement costs shall include any costs due to the necessary

disruption of normal operations of any electronic communications service or remote computing service in which the information may be stored.

(2) The fee amount under Subsection (1) shall be mutually agreed upon by the governmental entity and the person or entity providing the information, or in the absence of agreement, shall be as determined by the court:

(a) that issued the order for production of the information; or

(b) before which a criminal prosecution relating to the information would be brought, if no court order was issued for production of the information.

(3) The requirement of Subsection (1) does not apply to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under Section 77-23b-4. However, the court may order a payment as described under Subsection (1) if the court determines the information required is unusually voluminous in nature or otherwise causes an undue burden on the provider.

Amended by Chapter 122, 1989 General Session

77-23b-8. Violation of chapter -- Civil action by provider or subscriber -- Good faith defense -- Limitation of action.

(1) Except under Subsection 77-23b-4(5), any provider of electronic communications service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may in a civil action recover from the person or entity that engaged in that violation relief as is appropriate.

(2) In a civil action under this section, appropriate relief includes:

(a) preliminary and other equitable or declaratory relief as is appropriate;

(b) damages under Subsection (3); and

(c) a reasonable attorney's fee and other litigation costs reasonably incurred.

(3) The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case is a person entitled to recover less than $1,000.

(4) A good faith reliance on any of the following is a complete defense to any civil or criminal action brought under this chapter or any other law:

(a) a court warrant or order, a grand jury subpoena, legislative authorization, or a statutory authorization;

(b) a request of an investigative or law enforcement officer under Subsection 77-23a-10 (7); or

(c) a good faith determination that Subsection 77-23a-4(9) permitted the conduct complained of.

(5) A civil action under this section may not be commenced later than two years after the date the claimant first discovered or had a reasonable opportunity to discover the violation.

Amended by Chapter 22, 1989 General Session
Amended by Chapter 122, 1989 General Session

77-23b-9. Judicial scope of chapter remedies and sanctions.

The remedies and sanctions under this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

Enacted by Chapter 251, 1988 General Session

77-23c-101. Definitions.

As used in this chapter:

(1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(3) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, or any other political subdivision of the state or an administrative subunit of any political subdivision, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(4) "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device.

(5) "Location information service" means the provision of a global positioning service or other mapping, location, or directional information service.

(6) "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system.

Enacted by Chapter 223, 2014 General Session

77-23c-102. Location information privacy -- Warrant required for disclosure.

(1) (a) Except as provided in Subsection (2), a government entity may not obtain the location information, stored data, or transmitted data of an electronic device without a search warrant issued by a court upon probable cause.

(b) Except as provided in Subsection (1)(c), a government entity may not use, copy, or disclose, for any purpose, the location information, stored data, or transmitted data of an electronic device that is not the subject of the warrant that is collected as part of an effort to obtain the location information, stored data, or transmitted data of the electronic device that is the subject of the warrant in Subsection (1)(a).

(c) A government entity may use, copy, or disclose the transmitted data of an electronic device used to communicate with the electronic device that is the subject of the warrant if the government entity reasonably believes that the transmitted data is necessary to achieve the objective of the warrant.

(d) The data described in Subsection (1)(b) shall be destroyed in an unrecoverable manner by the government entity as soon as reasonably possible after the data is collected.

(2) (a) A government entity may obtain location information without a warrant for an electronic device:

(i) in accordance with Section 53-10-104.5;

(ii) if the device is reported stolen by the owner;

(iii) with the informed, affirmative consent of the owner or user of the electronic device;

(iv) in accordance with judicially recognized exceptions to warrant requirements; or

(v) if the owner has voluntarily and publicly disclosed the location information.

(b) A prosecutor may obtain a judicial order as defined in Section 77-22-2.5 for the purposes enumerated in Section 77-22-2.5.

(3) An electronic communication service provider, its officers, employees, agents, or other specified persons may not be held liable for providing information, facilities, or assistance in accordance with the terms of the warrant issued under this section or without a warrant pursuant to Subsection (2).

Enacted by Chapter 223, 2014 General Session
Amended by Chapter 223, 2014 General Session, (Coordination Clause)

77-23c-103. Notification required -- Delayed notification.

(1) Except as provided in Subsection (2), a government entity that executes a warrant pursuant to Subsection 77-23c-102(1)(a) shall, within 14 days after the day on which the operation concludes, issue a notification to the owner of the electronic device specified in the warrant that states:

(a) that a warrant was applied for and granted;

(b) the kind of warrant issued;

(c) the period of time during which the collection of data from the electronic device was authorized;

(d) the offense specified in the application for the warrant;

(e) the identity of the government entity that filed the application; and

(f) the identity of the judge who issued the warrant.

(2) A government entity seeking a warrant pursuant to Subsection 77-23c-102(1)(a) may submit a request, and the court may grant permission, to delay the notification required by Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable cause to believe that the notification may:

(a) endanger the life or physical safety of an individual;

(b) cause a person to flee from prosecution;

(c) lead to the destruction of or tampering with evidence;

(d) intimidate a potential witness; or

(e) otherwise seriously jeopardize an investigation or unduly delay a trial.

(3) When a delay of notification is granted under Subsection (2) and upon application by the government entity, the court may grant additional extensions of up to 30 days each.

(4) Upon expiration of the period of delayed notification granted under Subsection (2) or (3), the government entity shall serve upon or deliver by first-class mail to the owner of the electronic device a copy of the warrant together with notice

that:

(a) states with reasonable specificity the nature of the law enforcement inquiry; and

(b) contains:

(i) the information described in Subsections (1)(a) through (f);

(ii) a statement that notification of the search was delayed;

(iii) the name of the court that authorized the delay of notification; and

(iv) a reference to the provision of this chapter that allowed the delay of notification.

(5) A government entity is not required to notify the owner of the electronic device if the owner is located outside of the United States.

Enacted by Chapter 223, 2014 General Session

77-24a-1. Definition.

(1) "Lost or mislaid property":

(a) means any property that comes into the possession of a peace officer or law enforcement agency:

(i) that is not claimed by anyone who is identified as the owner of the property; or

(ii) for which no owner or interest holder can be found after a reasonable and diligent search;

(b) includes any property received by a peace officer or law enforcement agency from a person claiming to have found the property; and

(c) does not include property seized by a peace officer pursuant to Title 24, Forfeiture and Disposition of Property Act.

(2) "Public interest use" means:

(a) use by a governmental agency as determined by the agency's legislative body; or

(b) donation to a nonprofit charity registered with the state.

Repealed and Re-enacted by Chapter 394, 2013 General Session

77-24a-2. Disposition by police agency.

All lost or mislaid property coming into the possession of a peace officer or law enforcement agency shall be turned over to, held, and disposed of only by the local law enforcement agency whose authority extends to the area where the item was found.

Amended by Chapter 394, 2013 General Session

77-24a-3. Statement of finder of property.

(1) A person who finds lost or mislaid property and delivers it to a local law enforcement agency shall sign a statement included in a form provided by the agency, stating:

(a) the manner in which the property came into the person's possession, including the time, date, and place;

(b) that the person does not know who owns the property;
(c) that, to the person's knowledge, the property was not stolen;
(d) that the person's possession of the property is not unlawful; and
(e) any information the person is aware of which could lead to a determination of the owner.
(2) Additional information may be requested by the agency receiving the property, as necessary.

Amended by Chapter 394, 2013 General Session

77-24a-4. Locating owner of property.
(1) The local law enforcement agency shall take reasonable steps to determine the identity and location of the owner, and notify the owner that the property is in custody.
(2) The owner may obtain the property only by providing personal identification, identifying the property, and paying any costs incurred by the agency, including costs for advertising or storage.

Amended by Chapter 394, 2013 General Session

77-24a-5. Disposition of unclaimed property.
(1) (a) If the owner of any lost or mislaid property cannot be determined or notified, or if the owner of the property is determined and notified, and fails to appear and claim the property after three months of its receipt by the local law enforcement agency, the agency shall:
(i) publish notice of the intent to dispose of the unclaimed property on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b);
(ii) post a similar notice on the public website of the political subdivision within which the law enforcement agency is located; and
(iii) post a similar notice in a public place designated for notice within the law enforcement agency.
(b) The notice shall:
(i) give a general description of the item; and
(ii) the date of intended disposition.
(c) The agency may not dispose of the lost or mislaid property until at least eight days after the date of publication and posting.
(2) (a) If no claim is made for the lost or mislaid property within nine days of publication and posting, the agency shall notify the person who turned the property over to the local law enforcement agency, if it was turned over by a person under Section 77-24a-3.
(b) Except as provided in Subsection (4), if that person has complied with the provisions of this chapter, the person may take the lost or mislaid property if the person:
(i) pays the costs incurred for advertising and storage; and
(ii) signs a receipt for the item.
(3) If the person who found the lost or mislaid property fails to take the property under the provisions of this chapter, the agency shall:

(a) apply the property to a public interest use as provided in Subsection (4);

(b) sell the property at public auction and apply the proceeds of the sale to a public interest use; or

(c) destroy the property if it is unfit for a public interest use or sale.

(4) Before applying the lost or mislaid property to a public interest use, the agency having possession of the property shall obtain from the agency's legislative body:

(a) permission to apply the property to a public interest use; and

(b) the designation and approval of the public interest use of the property.

(5) Any person employed by a law enforcement agency who finds property may not claim or receive property under this section.

Amended by Chapter 394, 2013 General Session

77-25-2. Venue of prosecution by information.

Any prosecution by information, except in the case of a felony or class A misdemeanor, shall be commenced before a magistrate in the precinct of the county or municipality where the offense was alleged to have been committed, except as otherwise provided by law.

Enacted by Chapter 15, 1980 General Session

77-27-1. Definitions.

As used in this chapter:

(1) "Appearance" means any opportunity to address the board, a board member, a panel, or hearing officer, including an interview.

(2) "Board" means the Board of Pardons and Parole.

(3) "Commission" means the Commission on Criminal and Juvenile Justice.

(4) "Commutation" is the change from a greater to a lesser punishment after conviction.

(5) "Department" means the Department of Corrections.

(6) "Expiration" occurs when the maximum sentence has run.

(7) "Family" means persons related to the victim as a spouse, child, sibling, parent, or grandparent, or the victim's legal guardian.

(8) "Hearing" means an appearance before the board, a panel, a board member or hearing examiner, at which an offender or inmate is afforded an opportunity to be present and address the board, and encompasses the term "full hearing."

(9) "Location," in reference to a hearing, means the physical location at which the board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of the location of any person participating by electronic means.

(10) "Open session" means any hearing before the board, a panel, a board member, or a hearing examiner which is open to the public, regardless of the location of any person participating by electronic means.

(11) "Panel" means members of the board assigned by the chairperson to a particular case.

(12) "Pardon" is an act of grace that forgives a criminal conviction and restores

the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a consequence of conviction or punishment for a criminal offense.

(13) "Parole" is a release from imprisonment on prescribed conditions which, if satisfactorily performed by the parolee, enables the parolee to obtain a termination of his sentence.

(14) "Probation" is an act of grace by the court suspending the imposition or execution of a convicted offender's sentence upon prescribed conditions.

(15) "Reprieve or respite" is the temporary suspension of the execution of the sentence.

(16) "Termination" is the act of discharging from parole or concluding the sentence of imprisonment prior to the expiration of the sentence.

(17) "Victim" means:

(a) a person against whom the defendant committed a felony or class A misdemeanor offense, and regarding which offense a hearing is held under this chapter; or

(b) the victim's family, if the victim is deceased as a result of the offense for which a hearing is held under this chapter.

Amended by Chapter 41, 2013 General Session

77-27-1.5. Appearance by inmate, offender, or witness.

(1) An appearance by an inmate, offender, or witness before the board, a panel, board member, or hearing officer may be in person, through videoconferencing or other electronic means. Any appearance by videoconference or other electronic means shall be recorded as provided in Section 77-27-8.

(2) An inmate's or offender's electronic appearance by telephone is permissible with the consent of the inmate or offender, when the inmate or offender is incarcerated in a facility outside of this state.

Enacted by Chapter 110, 2010 General Session

77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.

(1) There is created the Board of Pardons and Parole. The board shall consist of five full-time members and not more than five pro tempore members to be appointed by the governor with the consent of the Senate as provided in this section. The members of the board shall be resident citizens of the state. The governor shall establish salaries for the members of the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) (a) (i) The full-time board members shall serve terms of five years. The terms of the full-time members shall be staggered so one board member is appointed for a term of five years on March 1 of each year.

(ii) The pro tempore members shall serve terms of five years, beginning on March 1 of the year of appointment, with no more than one pro tempore member term

beginning or expiring in the same calendar year. If a pro tempore member vacancy occurs, the board may submit the names of not fewer than three or more than five persons to the governor for appointment to fill the vacancy.

(b) All vacancies occurring on the board for any cause shall be filled by the governor with the consent of the Senate pursuant to this section for the unexpired term of the vacating member.

(c) The governor may at any time remove any member of the board for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(d) A member of the board may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state. A member may not engage in any occupation or business inconsistent with the member's duties.

(e) A majority of the board constitutes a quorum for the transaction of business, including the holding of hearings at any time or any location within or without the state, or for the purpose of exercising any duty or authority of the board. Action taken by a majority of the board regarding whether parole, pardon, commutation, termination of sentence, or remission of fines or forfeitures may be granted or restitution ordered in individual cases is deemed the action of the board. A majority vote of the five full-time members of the board is required for adoption of rules or policies of general applicability as provided by statute. However, a vacancy on the board does not impair the right of the remaining board members to exercise any duty or authority of the board as long as a majority of the board remains.

(f) Any investigation, inquiry, or hearing that the board has authority to undertake or hold may be conducted by any board member or an examiner appointed by the board. When any of these actions are approved and confirmed by the board and filed in its office, they are considered to be the action of the board and have the same effect as if originally made by the board.

(g) When a full-time board member is absent or in other extraordinary circumstances the chair may, as dictated by public interest and efficient administration of the board, assign a pro tempore member to act in the place of a full-time member. Pro tempore members shall receive a per diem rate of compensation as established by the Division of Finance and all actual and necessary expenses incurred in attending to official business.

(h) The chair may request staff and administrative support as necessary from the Department of Corrections.

(3) (a) Except as provided in Subsection (3)(b), the Commission on Criminal and Juvenile Justice shall:

(i) recommend five applicants to the governor for a full-time member appointment to the Board of Pardons and Parole; and

(ii) consider applicants' knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

(b) The procedures and requirements of Subsection (3)(a) do not apply if the governor appoints a sitting board member to a new term of office.

(4) (a) The board shall appoint an individual to serve as its mental health adviser

and may appoint other staff necessary to aid it in fulfilling its responsibilities under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness. The adviser shall prepare reports and recommendations to the board on all persons adjudicated as guilty with a mental illness, in accordance with Title 77, Chapter 16a.

(b) The mental health adviser shall possess the qualifications necessary to carry out the duties imposed by the board and may not be employed by the Department of Corrections or the Utah State Hospital.

(i) The Board of Pardons and Parole may review outside employment by the mental health advisor.

(ii) The Board of Pardons and Parole shall develop rules governing employment with entities other than the board by the mental health advisor for the purpose of prohibiting a conflict of interest.

(c) The mental health adviser shall:

(i) act as liaison for the board with the Department of Human Services and local mental health authorities;

(ii) educate the members of the board regarding the needs and special circumstances of persons with a mental illness in the criminal justice system;

(iii) in cooperation with the Department of Corrections, monitor the status of persons in the prison who have been found guilty with a mental illness;

(iv) monitor the progress of other persons under the board's jurisdiction who have a mental illness;

(v) conduct hearings as necessary in the preparation of reports and recommendations; and

(vi) perform other duties as assigned by the board.

Amended by Chapter 366, 2011 General Session

77-27-4. Chairperson and vice chairperson.

(1) The governor shall select one of the members of the board to serve as chairperson and board administrator at the governor's pleasure. The chairperson may exercise the duties and powers, in addition to those established by this chapter, necessary for the administration of daily operations of the board, including personnel, budgetary matters, panel appointments, and scheduling of hearings.

(2) The chairperson shall appoint a vice chairperson to act in the absence of the chairperson.

Amended by Chapter 195, 1990 General Session

77-27-5. Board of Pardons and Parole authority.

(1) (a) The Board of Pardons and Parole shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

(b) The board may sit together or in panels to conduct hearings. The chair shall appoint members to the panels in any combination and in accordance with rules promulgated by the board, except in hearings involving commutation and pardons. The chair may participate on any panel and when doing so is chair of the panel. The chair of the board may designate the chair for any other panel.

(c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole, pardon, or commutation granted or sentence terminated, except after a full hearing before the board or the board's appointed examiner in open session. Any action taken under this subsection other than by a majority of the board shall be affirmed by a majority of the board.

(d) A commutation or pardon may be granted only after a full hearing before the board.

(e) The board may determine restitution as provided in Section 77-27-6 and Subsection 77-38a-302(5)(d)(ii).

(2) (a) In the case of original parole grant hearings, rehearings, and parole revocation hearings, timely prior notice of the time and location of the hearing shall be given to the defendant, the county or district attorney's office responsible for prosecution of the case, the sentencing court, law enforcement officials responsible for the defendant's arrest and conviction, and whenever possible, the victim or the victim's family.

(b) Notice to the victim, his representative, or his family shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. This information shall be provided in terms that are reasonable for the lay person to understand.

(3) Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment, including restitution as provided in Section 77-27-6.

(4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

(5) In determining when, where, and under what conditions offenders serving sentences may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted, or their sentences commuted or terminated, the board shall consider whether the persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of Section 77-38a-302, as a condition of any parole, pardon, remission of fines or forfeitures, or commutation or termination of sentence.

(6) In determining whether parole may be terminated, the board shall consider the offense committed by the parolee, the parole period as provided in Section

76-3-202, and in accordance with Section 77-27-13.

Amended by Chapter 110, 2010 General Session

77-27-5.1. Board authority to order expungement.

(1) Upon granting a pardon, the board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(2) An expungement order, issued by the board, has the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(3) The board shall provide clear written directions to the recipient along with a list of agencies known to be affected by the expungement order.

Amended by Chapter 199, 2014 General Session

77-27-5.3. Meritless and bad faith litigation.

(1) For purposes of this section:

(a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, no contest, and conviction of any crime or offense.

(b) "Prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) In any case filed in state or federal court in which a prisoner submits a claim that the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons and Parole and any county jail administrator may consider that finding in any early release decisions concerning the prisoner.

Amended by Chapter 366, 2011 General Session

77-27-5.5. Review procedure -- Commutation.

(1) The Board of Pardons and Parole may consider the commutation of a death sentence only to life without parole.

(2) Only the person who has been sentenced to death or his counsel may petition the Board of Pardons and Parole for commutation.

(3) The petition shall be in writing, signed personally by the person sentenced to death, and shall include a statement of the grounds upon which the petitioner seeks review.

(4) The state shall be permitted to respond in writing to the petition as may be established by board rules.

(5) The board shall review the petition and determine whether the petition presents a substantial issue which has not been reviewed in the judicial process.

(6) The board shall not consider legal issues, including constitutional issues, which:

(a) have been reviewed previously by the courts;

(b) should have been raised during the judicial process; or

(c) if based on new information, are subject to judicial review.

(7) (a) If the board does not find a substantial issue, the board shall deny the hearing to the petitioner.

(b) If the board finds a substantial issue, the board shall conduct a hearing in which the petitioner and the state may present evidence and argument as may be provided by board rules.

Amended by Chapter 13, 1994 General Session

77-27-6. Payment of restitution.

(1) When the Board of Pardons and Parole orders the release on parole of an inmate who has been sentenced to make restitution pursuant to Title 77, Chapter 38a, Crime Victims Restitution Act, or whom the board has ordered to make restitution, and all or a portion of restitution is still owing, the board may establish a schedule, including both complete and court-ordered restitution, by which payment of the restitution shall be made, or order compensatory or other service in lieu of or in combination with restitution. In fixing the schedule and supervising the paroled offender's performance, the board may consider the factors specified in Section 77-38a-302.

(2) (a) The board may impose any court order for restitution.

(b) In accordance with Subsection 77-38a-302(5)(d)(ii), the board may order that a defendant make restitution for pecuniary damages that were not determined by the court, unless the board applying the criteria as set forth in Section 77-38a-302 determines that restitution is inappropriate.

(c) Except as provided in Subsection (2)(d), the board shall make all orders of restitution within 60 days after the termination or expiration of the defendant's sentence.

(d) If, upon termination or expiration of a defendant's sentence, the board has continuing jurisdiction over the defendant for a separate criminal offense, the board may defer making an order of restitution until termination or expiration of all sentences for that defendant.

(3) The board may also make orders of restitution for recovery of any or all costs incurred by the Department of Corrections or the state or any other agency arising out of the defendant's needs or conduct.

(4) If the defendant, upon termination or expiration of the sentence owes outstanding fines, restitution, or other assessed costs, or if the board makes an order of restitution within 60 days after the termination or expiration of the defendant's sentence, the matter shall be referred to the district court for civil collection remedies. The Board of Pardons and Parole shall forward a restitution order to the sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.

Amended by Chapter 96, 2005 General Session

77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency.

(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for

serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider the offender's fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the board. Any offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

(3) (a) In the case of an offender convicted of violating or attempting to violate any of the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, the chair may appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3).

(b) The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) The parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a person convicted of a first degree felony violation or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405.

(5) In any case where an offender's mental competency is questioned by the board, the chair may appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules governing:

(a) the hearing process;

(b) alienist examination; and

(c) parolee petitions for termination of parole.

Amended by Chapter 382, 2008 General Session

77-27-8. Record of hearing.

(1) A verbatim record of proceedings before the Board of Pardons and Parole shall be maintained by a suitable electronic recording device, except when the board dispenses with a record in a particular hearing or a portion of the proceedings.

(2) When the hearing involves the commutation of a death sentence, a certified shorthand reporter, in addition to electronic means, shall record all proceedings except when the board dispenses with a record for the purpose of deliberations in executive session. The compensation of the reporter shall be determined by the board. The

reporter shall immediately file with the board the original record and when requested shall with reasonable diligence furnish a transcription or copy of the record upon payment of reasonable fees as determined by the board.

(3) When an inmate or offender affirms by affidavit that he is unable to pay for a copy of the record, the board may furnish a copy of the record, at the expense of the state, to the inmate or offender.

Amended by Chapter 110, 2010 General Session

77-27-9. Parole proceedings.

(1) (a) The Board of Pardons and Parole may pardon or parole any offender or commute or terminate the sentence of any offender committed to a penal or correctional facility under the jurisdiction of the Department of Corrections for a felony or class A misdemeanor except as provided in Subsection (2).

(b) The board may not release any offender before the minimum term has been served unless the board finds mitigating circumstances which justify the release and unless the board has granted a full hearing, in open session, after previous notice of the time and location of the hearing, and recorded the proceedings and decisions of the board.

(c) The board may not pardon or parole any offender or commute or terminate the sentence of any offender unless the board has granted a full hearing, in open session, after previous notice of the time and location of the hearing, and recorded the proceedings and decisions of the board.

(d) The release of an offender shall be at the initiative of the board, which shall consider each case as the offender becomes eligible. However, a prisoner may submit the prisoner's own application, subject to the rules of the board promulgated in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4); aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole until the offender has fully completed serving the minimum mandatory sentence imposed by the court. This Subsection (2)(a) supersedes any other provision of law.

(b) The board may not parole any offender or commute or terminate the sentence of any offender before the offender has served the minimum term for the offense, if the offender was sentenced prior to April 29, 1996, and if:

(i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape, aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person; and

(ii) the victim of the offense was under 18 years of age at the time the offense was committed.

(c) For a crime committed on or after April 29, 1996, the board may parole any

offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in this section.

(d) The board may not pardon or parole any offender or commute or terminate the sentence of any offender who is sentenced to life in prison without parole except as provided in Subsection (6).

(e) On or after April 27, 1992, the board may commute a sentence of death only to a sentence of life in prison without parole.

(f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come before the Board of Pardons and Parole on or after April 27, 1992.

(3) (a) The board may issue subpoenas to compel the attendance of witnesses and the production of evidence, to administer oaths, and to take testimony for the purpose of any investigation by the board or any of its members or by a designated hearing examiner in the performance of its duties.

(b) A person who willfully disobeys a properly served subpoena issued by the board is guilty of a class B misdemeanor.

(4) (a) The board may adopt rules consistent with law for its government, meetings and hearings, the conduct of proceedings before it, the parole and pardon of offenders, the commutation and termination of sentences, and the general conditions under which parole may be granted and revoked.

(b) The rules shall ensure an adequate opportunity for victims to participate at hearings held under this chapter, as provided in Section 77-27-9.5.

(c) The rules may allow the board to establish reasonable and equitable time limits on the presentations by all participants in hearings held under this chapter.

(5) The board does not provide counseling or therapy for victims as a part of their participation in any hearing under this chapter.

(6) The board may parole a person sentenced to life in prison without parole if the board finds by clear and convincing evidence that the person is permanently incapable of being a threat to the safety of society.

Amended by Chapter 110, 2010 General Session

77-27-9.5. Victim may attend hearings.

(1) As used in this section, "hearing" means a hearing for a parole grant or revocation, or a rehearing of either of these if the offender is present.

(2) (a) Except as provided in Subsection (2)(b), when a hearing is held regarding any offense committed by the defendant that involved the victim, the victim may attend the hearing to present his views concerning the decisions to be made regarding the defendant.

(b) (i) The victim may not attend a redetermination or special attention hearing, if the offender is not present.

(ii) At that redetermination or special attention hearing, the board shall give consideration to any presentation previously given by the victim regarding that offender.

(3) (a) The notice of the hearing shall be timely sent to the victim at his most recent address of record with the board.

(b) The notice shall include:

(i) the date, time, and location of the hearing;

(ii) a clear statement of the reason for the hearing, including all offenses involved;

(iii) the statutes and rules applicable to the victim's participation in the hearing;

(iv) the address and telephone number of an office or person the victim may contact for further explanation of the procedure regarding victim participation in the hearing; and

(v) specific information about how, when, and where the victim may obtain the results of the hearing.

(c) If the victim is dead, or the board is otherwise unable to contact the victim, the board shall make reasonable efforts to notify the victim's immediate family of the hearing.

(d) The victim may communicate with the board for consideration of continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

(4) The victim, or family members if the victim is deceased or unable to attend due to physical incapacity, may:

(a) attend the hearing to observe;

(b) make a statement to the board or its appointed examiner either in person or through a representative appointed by the victim or his family; and

(c) remain present for the hearing if he appoints another to make a statement on his behalf.

(5) The statement may be presented:

(a) as a written statement, which may also be read aloud, if the presenter desires; or

(b) as an oral statement presented by the person selected under Subsection (4).

(6) The victim may be accompanied by a member of his family or another individual, present to provide emotional support to the victim.

(7) The victim may, upon request, testify outside the presence of the defendant but a separate hearing may not be held for this purpose.

Amended by Chapter 355, 1998 General Session

77-27-9.7. Victim right to notification of release -- Notice by board.

A victim entitled to notice of the hearings regarding parole under Section 77-27-9.5 shall also be notified by the Board of Pardons and Parole of the right of victims to be advised upon request of other releases of the defendant under Section 64-13-14.7. The board may include this notification in the same notice sent under Section 77-27-9.5. The board shall coordinate with the Department of Corrections to ensure notice under this section is provided to victims.

Amended by Chapter 13, 1994 General Session

77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking -- Intensive early release parole program.

(1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall issue to the parolee a certificate setting forth the conditions of parole which the

offender shall accept and agree to as evidenced by the offender's signature affixed to the agreement.

(b) The parole agreement shall require that the inmate agree in writing that the board may issue a warrant and conduct a parole revocation hearing if:

(i) the board determines after the grant of parole that the inmate willfully provided to the board false or inaccurate information that the board finds was significant in the board's determination to grant parole; or

(ii) (A) the inmate has engaged in criminal conduct prior to the granting of parole; and

(B) the board did not have information regarding the conduct at the time parole was granted.

(c) A copy of the agreement shall be delivered to the Department of Corrections and a copy shall be given to the parolee. The original shall remain with the board's file.

(2) (a) If an offender convicted of violating or attempting to violate Section 76-5-301.1, Subsection 76-5-302(1), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, is released on parole, the board shall order outpatient mental health counseling and treatment as a condition of parole.

(b) The board shall develop standards and conditions of parole under this Subsection (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) This Subsection (2) does not apply to intensive early release parole.

(3) (a) In addition to the conditions set out in Subsection (1), the board may place offenders in an intensive early release parole program. The board shall determine the conditions of parole which are reasonably necessary to protect the community as well as to protect the interests of the offender and to assist the offender to lead a law-abiding life.

(b) The offender is eligible for this program only if the offender:

(i) has not been convicted of a sexual offense; or

(ii) has not been sentenced pursuant to Section 76-3-406.

(c) The department shall:

(i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for operation of the program;

(ii) adopt and implement internal management policies for operation of the program;

(iii) determine whether or not to refer an offender into this program within 120 days from the date the offender is committed to prison by the sentencing court; and

(iv) make the final recommendation to the board regarding the placement of an offender into the program.

(d) The department may not consider credit for time served in a county jail awaiting trial or sentencing when calculating the 120-day period.

(e) The prosecuting attorney or sentencing court may refer an offender for consideration by the department for participation in the program.

(f) The board shall determine whether or not to place an offender into this program within 30 days of receiving the department's recommendation.

(4) This program shall be implemented by the department within the existing

budget.

(5) During the time the offender is on parole, the department shall collect from the offender the monthly supervision fee authorized by Section 64-13-21.

Amended by Chapter 294, 2008 General Session
Amended by Chapter 382, 2008 General Session

77-27-10.5. Special condition of parole -- Penalty.

(1) In accordance with Section 77-27-5, the Board of Pardons and Parole may release the defendant on parole and as a condition of parole, the board may order the defendant to be prohibited from directly or indirectly engaging in any profit or benefit generating activity relating to the publication of facts or circumstances pertaining to the defendant's involvement in the criminal act for which the defendant is convicted.

(2) The order may prohibit the defendant from contracting with any person, firm, corporation, partnership, association, or other legal entity with respect to the commission and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article, tape recording, phonograph record, radio, or television presentations, live entertainment of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions regarding the criminal conduct.

(3) The board may order that the prohibition includes any event undertaken and experienced by the defendant while avoiding apprehension from the authorities or while facing criminal charges.

(4) The board may order that any action taken by the defendant by way of execution of power of attorney, creation of corporate entities, or other action to avoid compliance with the board's order shall be grounds for revocation of parole as provided in Section 77-27-11.

(5) Adult Probation and Parole shall notify the board of any alleged violation of the board's order under this section.

(6) The violation of the board's order shall be considered a violation of parole.

(7) For purposes of this section:

(a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, no contest, and conviction of any crime or offense; and

(b) "defendant" means the convicted defendant, the defendant's assignees, and representatives acting on the defendant's authority.

Amended by Chapter 366, 2011 General Session

77-27-11. Revocation of parole.

(1) The board may revoke the parole of any person who is found to have violated any condition of his parole.

(2) (a) If a parolee is detained by the Department of Corrections or any law enforcement official for a suspected violation of parole, the Department of Corrections shall immediately report the alleged violation to the board, by means of an incident report, and make any recommendation regarding the incident.

(b) No parolee may be held for a period longer than 72 hours, excluding

weekends and holidays, without first obtaining a warrant.

(3) Any member of the board may issue a warrant based upon a certified warrant request to a peace officer or other persons authorized to arrest, detain, and return to actual custody a parolee, and may upon arrest or otherwise direct the Department of Corrections to determine if there is probable cause to believe that the parolee has violated the conditions of his parole.

(4) Upon a finding of probable cause, a parolee may be further detained or imprisoned again pending a hearing by the board or its appointed examiner.

(5) (a) The board or its appointed examiner shall conduct a hearing on the alleged violation, and the parolee shall have written notice of the time and location of the hearing, the alleged violation of parole, and a statement of the evidence against him.

(b) The board or its appointed examiner shall provide the parolee the opportunity:

(i) to be present;

(ii) to be heard;

(iii) to present witnesses and documentary evidence;

(iv) to confront and cross-examine adverse witnesses, absent a showing of good cause for not allowing the confrontation; and

(v) to be represented by counsel when the parolee is mentally incompetent or pleading not guilty.

(c) If heard by an appointed examiner, the examiner shall make a written decision which shall include a statement of the facts relied upon by the examiner in determining the guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the alleged violation occurred. The appointed examiner shall then refer the case to the board for disposition.

(d) Final decisions shall be reached by majority vote of the members of the board sitting and the parolee shall be promptly notified in writing of the board's findings and decision.

(6) Parolees found to have violated the conditions of parole may, at the discretion of the board, be returned to parole, have restitution ordered, or be imprisoned again as determined by the board, not to exceed the maximum term, or be subject to any other conditions the board may impose within its discretion.

Amended by Chapter 110, 2010 General Session

77-27-12. Parole discharge, sentence termination.

Any person released on parole shall be discharged from parole or have his sentence terminated subject to the conditions and limitations contained in Section 76-3-202.

Enacted by Chapter 213, 1985 General Session

77-27-13. Board of Pardons and Parole -- Duties of the judiciary, the Department of Corrections, and law enforcement -- Removal of material from files.

(1) The chief executive officer and employees of each penal or correctional institution shall cooperate fully with the board, permit board members free access to offenders, and furnish the board with pertinent information regarding an offender's physical, mental, and social history and his institutional record of behavior, discipline, work, efforts of self-improvement, and attitude toward society.

(2) The Department of Corrections shall furnish pertinent information it has and shall provide a copy of the pre-sentence report and any other investigative reports to the board. In all cases where a pre-sentence report has not been completed, the department shall make a post-sentence report and shall provide a copy of it to the board as soon as possible. The department shall provide the board, upon request, any additional investigations or information needed by the board to reach a decision or conduct a hearing.

(3) The department shall make its facilities available to the board to carry out its functions.

(4) Law enforcement officials responsible for the offender's arrest, conviction, and sentence shall furnish all pertinent data requested by the board.

(5) (a) In all cases where an indeterminate sentence is imposed, the judge imposing the sentence may within 30 days from the date of the sentence, mail to the chief executive of the board a statement in writing setting out the term for which, in his opinion, the offender sentenced should be imprisoned, and any information he may have regarding the character of the offender or any mitigating or aggravating circumstances connected with the offense for which the offender has been convicted. In addition, the prosecutor shall in all cases, within 30 days from the date of sentence, forward in writing to the chief executive of the board a full and complete description of the crime, a written record of any plea bargain entered into, a statement of the mitigating or aggravating circumstances or both, all investigative reports, a victim impact statement referring to physical, mental, or economic loss suffered, and any other information the prosecutor believes will be relevant to the board. These statements shall be preserved in the files of the board.

(b) Notwithstanding Subsection (5)(a), the board may remove from its files any:

(i) statement that it is not going to rely on in its decisionmaking process;

(ii) information found to be incorrect by a court, the Board of Pardons and Parole, or administrative agency; or

(iii) duplicative materials.

(6) The chief executive officer of any penal or correctional institution shall permit offenders to send mail to the board without censorship.

Amended by Chapter 171, 1998 General Session

77-27-21.7. Sex offender restrictions.

(1) As used in this section:

(a) "Protected area" means the premises occupied by:

(i) any licensed day care or preschool facility;

(ii) a swimming pool that is open to the public;

(iii) a public or private primary or secondary school that is not on the grounds of a correctional facility;

(iv) a community park that is open to the public; and

(v) a playground that is open to the public, including those areas designed to provide children space, recreational equipment, or other amenities intended to allow children to engage in physical activity.

(b) (i) Except under Subsection (1)(b)(ii), "protected area" also includes any area that is 1,000 feet or less from the residence of a victim of the sex offender's offense under Subsection (1)(c) if:

(A) the sex offender is on probation or parole for an offense under Subsection (1)(c);

(B) the victim or the victim's parent or guardian has advised the Department of Corrections that the victim desires that the sex offender be restricted from the area under this Subsection (1)(b)(i) and authorizes the Department of Corrections to advise the sex offender of the area where the victim resides for purposes of this Subsection (1)(b); and

(C) the Department of Corrections has notified the sex offender in writing that the sex offender is prohibited from being in the protected area under Subsection (1)(b)(i) and has also provided a description of the location of the protected area to the sex offender.

(ii) "Protected area" under Subsection (1)(b)(i) does not apply to the residence and area surrounding the residence of a victim if:

(A) the victim is a member of the immediate family of the sex offender; and

(B) the terms of the sex offender's agreement of probation or parole allow the sex offender to reside in the same residence as the victim.

(c) "Sex offender" means an adult or juvenile who is required to register in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, due to a conviction for any offense that is committed against a person younger than 18 years of age.

(2) It is a class A misdemeanor for any sex offender to be in any protected area on foot or in or on any vehicle, including vehicles that are not motorized, except for:

(a) those specific periods of time when the sex offender must be present within a protected area in order to carry out necessary parental responsibilities;

(b) when the protected area is a school building:

(i) under Subsection (1)(a)(iii);

(ii) being opened for or being used for a public activity; and

(iii) not being used for any school-related function that involves persons younger than 18 years of age; or

(c) when the protected area is a licensed day care or preschool facility:

(i) under Subsection (1)(a)(i); and

(ii) located within a building that is open to the public for purposes, services, or functions that are operated separately from the day care or preschool facility located in the building, except that the sex offender may not be in any part of the building occupied by the day care or preschool facility.

Amended by Chapter 145, 2012 General Session

77-27-21.8. Sex offender in presence of a child -- Definitions -- Penalties.

(1) As used in this section:

(a) "Accompany" means:

(i) to be in the presence of an individual; and

(ii) to move or travel with that individual from one location to another, whether outdoors, indoors, or in or on any type of vehicle.

(b) "Child" means an individual younger than 14 years of age.

(2) A sex offender subject to registration in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an offense committed or attempted to be committed against a child younger than 14 years of age is guilty of a class A misdemeanor if the sex offender requests, invites, or solicits a child to accompany the sex offender, under circumstances that do not constitute an attempt to violate Section 76-5-301.1, child kidnapping, unless:

(a) (i) the sex offender, prior to accompanying the child:

(A) verbally advises the child's parent or legal guardian that the sex offender is on the state sex offender registry and is required by state law to obtain written permission in order for the sex offender to accompany the child; and

(B) requests that the child's parent or legal guardian provide written authorization for the sex offender to accompany the child, including the specific dates and locations;

(ii) the child's parent or legal guardian has provided to the sex offender written authorization, including the specific dates and locations, for the sex offender to accompany the child; and

(iii) the sex offender has possession of the written authorization and is accompanying the child only at the dates and locations specified in the authorization;

(b) the child's parent or guardian has verbally authorized the sex offender to accompany the child either in the child's residence or on property appurtenant to the child's residence, but in no other locations; or

(c) the child is the natural child of the sex offender, and the offender is not prohibited by any court order, or probation or parole provision, from contact with the child.

(3) (a) A sex offender convicted of a violation of Subsection (2) is subject to registration in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an additional five years subsequent to the required registration under Section 77-27-21.5.

(b) The period of additional registration imposed under Subsection (3)(a) is also in addition to any period of registration imposed under Subsection 77-41-107(3) for failure to comply with registration requirements.

(4) It is not a defense to a prosecution under this section that the defendant mistakenly believed the individual to be 14 years of age or older at the time of the offense or was unaware of the individual's true age.

(5) This section does not apply if a sex offender is acting to rescue a child who is in an emergency and life-threatening situation.

Amended by Chapter 145, 2012 General Session

77-27-21.9. Sex offender assessment.

(1) As used in this section:

(a) "Dynamic factors" means a person's individual characteristics, issues, resources, or circumstances that:

(i) can change or be influenced; and

(ii) affect the risk of recidivism or the risk of violating conditions of probation or parole.

(b) "Multi-domain assessment" means an evaluation process or tool which reports in quantitative and qualitative terms an offender's condition, stability, needs, resources, and dynamic factors affecting the offender's transition into the community and compliance with conditions of probation or parole, such as the following:

(i) alcohol and other drug use;

(ii) mental health status;

(iii) physical health;

(iv) criminal behavior;

(v) education;

(vi) emotional health and barriers;

(vii) employment;

(viii) family dynamics;

(ix) housing;

(x) physical health and nutrition;

(xi) spirituality;

(xii) social support systems;

(xiii) special population needs, including:

(A) co-existing disorders;

(B) domestic violence;

(C) drug of choice;

(D) gender, ethnic, and cultural considerations;

(E) other health issues;

(F) sexual abuse; and

(G) sexual orientation;

(xiv) transportation; and

(xv) treatment involvement.

(c) "Qualitative terms" means written summaries used to describe meaning, enrich, or explain significant quantitative indicators or benchmarks within the areas defined in Subsection (1)(b).

(d) "Quantitative terms" means numerical distinctions or benchmarks used to describe conditions within the areas defined in Subsection (1)(b).

(2) The department shall issue a request for proposals to provide a periodic multi-domain assessment tool, as defined in Subsection (1)(b) and implement the tool for a three-year trial period in the management of sex offenders being supervised in the community in the department's Region 3.

(3) The request for proposals shall include a requirement that the multi-domain assessment tool be designed to be administered:

(a) every 16 weeks during the first year a sex offender is supervised in the community; and

(b) every 12 to 26 weeks during the second and subsequent years a sex

offender is supervised in the community, as determined appropriate by the department's supervisory personnel and the sex offender's treatment team.

(4) The department shall promptly make results of the multi-domain assessment available to:

(a) the sex offender's treatment team; and

(b) the corrections personnel responsible for supervising the offender.

(5) The department shall provide to the legislative Law Enforcement and Criminal Justice Interim Committee at the conclusion of the trial period a written report of the results of the use of the multi-domain assessments, including:

(a) the impact on recidivism;

(b) other indicators of the effect of the use of the assessments;

(c) the number of assessments administered annually;

(d) the number of individuals who were assessed during the year; and

(e) any recommended legislative or policy changes.

Enacted by Chapter 309, 2008 General Session

77-27-24. Out-of-state supervision of probationers and parolees -- Compacts.

The governor of this state is authorized to execute a compact on behalf of the State of Utah with any other state legally joining therein. "State," as used in this section, includes any state, territory or possession of the United States, and the District of Columbia. The compact shall be in substantially the following form:

(1) A compact entered into by and among the contracting states, signatories thereto, with the consent of the Congress of the United States of America, granted by an act entitled An Act Granting the Consent of Congress to any two or more States to enter into Agreements or Compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes.

(2) The contracting states solemnly agree:

(a) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called sending state) to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called receiving state) while on probation or parole, if:

(i) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there; or

(ii) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

(A) Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

(B) A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(b) That each receiving state will assume the duties of visitation of and

supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(c) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole from such sending state. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation (or parole) shall be conclusive upon and not reviewable within the receiving state; provided if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(d) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference.

(e) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(f) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(g) That this compact shall continue in force and remain binding upon each executing state until renounced by it. That duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, on sending six months' notice in writing of intention to withdraw from the compact to the other states party thereto.

Amended by Chapter 306, 2007 General Session

77-27-25. Amendments to interstate compact -- Transfer of prisoners -- Costs -- Supplementary agreements.

The governor is authorized, on behalf of the state, to execute amendments to the compacts provided for in Section 77-27-24, with any other state legally joined therein. "State," as used in this section, includes any state, territory or possession of the United States and the District of Columbia. The amendments to the compact shall be in form substantially as follows:

(a) Whenever the duly constituted judicial and administrative authorities in a sending state shall determine incarceration of a probationer or reincarceration of a parolee is necessary or desirable, said officials may direct that the incarceration or

reincarceration be in a prison or other correctional institution within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(b) As used in this amendment, the term "receiving state" shall be construed to mean any state, other than the sending state, in which a parolee or probationer may be found, provided that said state is a party to this amendment.

(c) Every state which adopts this amendment shall designate at least one of its correctional institutions as a "Compact Institution" and shall incarcerate persons therein as provided in (a) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "Compact Institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's prisoners as may be confined in the institution.

(d) Persons confined in "Compact Institutions" pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to a prison or other correctional institution within the sending state, for return to probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state.

(e) All persons who may be confined in a "Compact Institution" pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of incarceration or reincarceration in a receiving state shall not deprive any person so incarcerated or reincarcerated of any rights which said person would have had if incarcerated or reincarcerated in an appropriate institution of the sending state; nor shall any agreement to submit to incarceration or reincarceration pursuant to the terms of this amendment be construed as a waiver of any rights which the prisoner would have had if he had been incarcerated or reincarcerated in an appropriate institution of the sending state, except that the hearing or hearings, if any, to which a parolee or probationer may be entitled, (prior to incarceration or reincarceration) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(f) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(g) This amendment shall take effect when ratified by any two or more states party to the compact and shall be effective as to those states which have specifically ratified this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have ratified this amendment.

Enacted by Chapter 15, 1980 General Session

77-27-26. Deputization of agents to effect return of parole and probation

violators.

(1) (a) The official administrator of the interstate compact for the supervision of parolees and probationers is authorized and empowered to deputize any person to act as an officer and agent of this state in carrying out the return of any person who has violated the terms and conditions of parole or probation as granted by this state.

(b) In any matter relating to the return of a violator described in Subsection (1)(a), any deputized agent shall have all the powers of a peace officer of this state.

(2) Any deputization of any person pursuant to this section shall be in writing and the deputized agent shall:

(a) carry formal evidence of his deputization; and

(b) produce the evidence of deputization upon demand.

(3) The official administrator of the interstate compact is authorized, subject to the approval of the governor, to enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state.

Amended by Chapter 282, 1998 General Session

77-27-27. Retaking or reincarceration for parole or probation violations -- Hearing and notice to sending state -- Detention of parolee or probationer.

Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this act within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall as soon as practicable, following termination of any hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

Enacted by Chapter 15, 1980 General Session

77-27-28. Hearing officer.

Any hearing pursuant to this act shall be heard by the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of the administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

Enacted by Chapter 15, 1980 General Session

77-27-29. Rights of parolee or probationer -- Record of proceedings.

(1) With respect to any hearing pursuant to the Uniform Act for Out-of-State Supervision, the parolee or probationer shall have the following rights:

(a) reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(b) be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing;

(c) to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons; and

(d) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions.

(2) A record of the proceedings shall be made and preserved.

Amended by Chapter 306, 2007 General Session

77-27-30. Violation by parolee or probationer supervised in another state -- Hearing in other state -- Procedure upon receipt of record from other state.

In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this act, the record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

Enacted by Chapter 15, 1980 General Session

77-27-31. Short title.

Sections 77-27-24 through 77-27-30 of this chapter may be cited as the "Uniform Act for Out-of-State Supervision."

Enacted by Chapter 15, 1980 General Session

77-28-1. Compact enacted into law -- Text of compact.

The Western Interstate Corrections Compact as contained herein is enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

ARTICLE I
PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III
CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that money is legally available therefor, pay to the receiving state, a

reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV
PROCEDURE AND RIGHTS

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institutions in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such

hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any powers in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V
ACTS NOT REVIEWABLE IN RECEIVING STATE -- EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at any time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI
FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this

compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII
ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purpose of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII
WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX
OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X
CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Amended by Chapter 342, 2011 General Session

77-28-2. Department of Corrections -- Authority to transfer inmates.

The Department of Corrections may transfer an inmate (as defined in Article II (d) of the Western Interstate Corrections Compact) to any institution within or without this state if this state has entered into a contract or contracts for the confinement of inmates in said institutions pursuant to Article III of the Western Interstate Corrections Compact.

Amended by Chapter 212, 1985 General Session

77-28-3. Duties and powers of courts, departments, agencies and officers in enforcing and effecting compact.

The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

Enacted by Chapter 15, 1980 General Session

77-28-4. Board of Pardons and Parole -- Authority to hold hearings.

The Board of Pardons and Parole is hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV (f) of the Western Interstate Corrections Compact. The board is further authorized to travel to any state who is a party to the compact to which an inmate is sent for confinement, for the purpose of holding any hearing to which an inmate is entitled by the laws of Utah.

Amended by Chapter 13, 1994 General Session

77-28-5. Governor -- Power to enter into contracts.

The governor is empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof.

Enacted by Chapter 15, 1980 General Session

77-28a-1. Compact entered into law -- Text of compact.

The interstate compact on corrections as contained herein is enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I

PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment

and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this Compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II
DEFINITIONS

As used in this Compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the United States of America, a Territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(b) "Sending state" means a state party to this Compact in which conviction or court commitment was had;

(c) "Receiving state" means a state party to this Compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had;

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution;

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

ARTICLE III
CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration;

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(3) Participation in programs of inmate employment, if any, the disposition or crediting of any payments received by inmates on account thereof, and the crediting of proceeds from or disposal of any products resulting therefrom;

(4) Delivery and retaking of inmates;

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV
PROCEDURES AND RIGHTS

(a) Whenever the duly constituted authorities in a state party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that

confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care of an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution with the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this Compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state, if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this Compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of

such return to its territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any powers in respect of any inmate confined pursuant to the terms of this Compact.

ARTICLE V

ACTS NOT REVIEWABLE IN RECEIVING STATE: EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this Compact through any and all states party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

FEDERAL AID

Any state party to this Compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this Compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided, that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

ENTRY INTO FORCE

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this Compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII

WITHDRAWAL AND TERMINATION

This Compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

ARTICLE IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of co-operative institutional arrangements.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this Compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XI

An inmate must request a transfer in writing before such a transfer can be made pursuant to Article IV.

Enacted by Chapter 38, 1982 General Session

77-28a-2. Department of Corrections -- Authority to transfer inmates.

The Department of Corrections may transfer an inmate, as defined in Subparagraph (d) of Article II of the Interstate Corrections Compact, to any institution within or without this state if this state has entered into any contracts for the confinement of inmates in said institutions pursuant to Article III of that Compact.

Amended by Chapter 212, 1985 General Session

77-28a-3. Duties and powers of courts, departments, agencies and officers in enforcing and effecting compact.

The courts, departments, agencies and officers of this state and its political subdivisions shall enforce this Compact and shall do all things necessary and appropriate to the effectuation of the purposes and intent of this Compact which may be within their respective jurisdictions including, but not limited to, the making and

submission of any reports required by that Compact.

Enacted by Chapter 38, 1982 General Session

77-28a-4. Board of Pardons and Parole -- Authority to hold hearings.

The Board of Pardons and Parole is hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV (a) of the Interstate Corrections Compact. The board is further authorized to travel to any state which is a party to that Compact and to which an inmate is sent for confinement, for the purpose of holding any hearing to which that inmate is entitled by the laws of Utah.

Amended by Chapter 13, 1994 General Session

77-28a-5. Governor -- Power to enter into contracts.

The governor is empowered to enter into such contracts on behalf of this state as may be appropriate to implement its participation in the Interstate Corrections Compact pursuant to Article III thereof.

Amended by Chapter 320, 1983 General Session

77-28b-1. Definitions.

(1) "Assurance" means a special condition concerning the confinement or release of an offender which must be met prior to the release of the offender.

(2) "Offender" means a juvenile certified to be tried as an adult or an adult convicted of any criminal offense under Utah law.

(3) "Receiving country" means the jurisdiction to which the offender is to be transferred.

(4) "Sending state" means the jurisdiction from which the offender is to be transferred.

Enacted by Chapter 324, 1990 General Session

77-28b-2. Director's authority.

The director of the Department of Corrections may transfer offenders having foreign citizenship status to countries of citizenship under this chapter if a treaty exists between the United States and the foreign country.

Enacted by Chapter 324, 1990 General Session

77-28b-3. Eligibility criteria for international transfer.

An offender must meet the following criteria before he may be considered for an international transfer:

(1) the offender is a citizen of the receiving country;

(2) the offender consents to transfer to his country of citizenship;

(3) the offense committed by the offender constitutes a criminal offense under the laws of the receiving state;

(4) the offender does not have fewer than 12 months remaining on his sentence at the time of the application for transfer;

(5) the offender is not under a sentence of death;

(6) the offender does not have collateral attacks or appeals on either the sentence or conviction pending;

(7) all other provisions of the imposed sentence such as fines, restitution, and penalties are paid in full;

(8) there are no detainers, wanted notices based on criminal convictions, indictments, informations, complaints, or parole or probation violation allegations pending against the offender; and

(9) the offender meets all of the eligibility requirements of the treaty with his country.

Enacted by Chapter 324, 1990 General Session

77-28b-4. Role of the classification officer.

(1) The classification officer of each correctional institution shall be provided with the eligibility requirements of each prisoner transfer treaty.

(2) The classification officer shall forward Form I, Transfer Inquiry, to all offenders identified as having national or citizenship status in a party nation.

(3) Upon receipt of Form I, Transfer Inquiry, the offender may indicate he is:

(a) interested in pursuing a transfer by signing Form I and returning it to the classification officer along with proof of citizenship; or

(b) not interested in pursuing a transfer by returning Form I to the classification officer without proof of citizenship.

(4) If the offender indicates on Form I, Transfer Inquiry, that he is interested in pursuing a transfer, the institution classification officer shall complete Form II, Inmate Information Provided to Treaty Nation, and Form III, Notice Regarding International Prisoner Transfer.

(5) The following forms, provided by the federal government, shall be completed and forwarded in triplicate by the classification officer to the superintendent of the institution:

(a) Form I, Transfer Inquiry;

(b) Form II, Inmate Information Provided to Treaty Nation;

(c) Form III, Notice Regarding International Prisoner Transfer;

(d) proof of citizenship;

(e) statement of offender's eligibility;

(f) presentence report;

(g) classification assessment;

(h) current psychological and medical reports;

(i) signed release of confidential information forms;

(j) criminal history sheet; and

(k) judgments of conviction or certification to be tried as an adult.

Enacted by Chapter 324, 1990 General Session

77-28b-5. Role of institution warden.

The warden shall sign Form III, Notice Regarding International Prisoner Transfer, and forward the application and the material required in Section 77-28b-4 in triplicate to the Department of Corrections Inmate Placement Program Bureau.

Enacted by Chapter 324, 1990 General Session

77-28b-6. Role of Inmate Placement Program Bureau.

(1) The Department of Corrections Inmate Placement Program Bureau shall:

(a) investigate the request to ensure that all eligibility requirements are met;

(b) request a records check to verify records listed in Section 77-28b-3;

(c) review application and materials for completeness and compliance with treaty terms;

(d) develop and recommend assurances, where indicated; and

(e) provide written notification of the transfer request to the following entities and receive objections or other comments for 15 business days after sending the notification:

(i) attorney general;

(ii) prosecuting law enforcement agency;

(iii) prosecutor; and

(iv) sentencing court.

(2) If the Inmate Placement Program Bureau investigation determines that the application and materials are incomplete or do not comply with the terms of the treaty, the application shall be rejected and returned to the institution in which the inmate is incarcerated.

(3) If the investigation of the bureau determines the application and materials are complete and in compliance with the terms of the treaty, the application and materials shall be forwarded to the director of the Department of Corrections.

Enacted by Chapter 324, 1990 General Session

77-28b-7. Role of director.

(1) The director of the Department of Corrections shall review the application and materials. Upon his approval the application and materials shall be forwarded to the governor for authorization to transfer.

(2) Applications that are not approved by the director shall be returned to the sending institution and the inmate shall be notified.

Enacted by Chapter 324, 1990 General Session

77-28b-8. Referral to the United States Department of Justice, Office of International Affairs.

(1) Upon receipt of the governor's authorization for international transfer, the application and materials shall be forwarded to the United States Department of Justice, Office of International Affairs, by the Inmate Placement Program Bureau.

(2) The bureau shall notify the inmate and the warden of the sending institution

of the decision of the application for international transfer.

(3) All arrangements regarding the treaty process and proposed assurances shall be negotiated between the bureau and the United States Department of Justice, Office of International Affairs.

Enacted by Chapter 324, 1990 General Session

77-28b-9. Transfer of offender.

(1) If the inmate is accepted for international transfer by the United States Department of Justice, Office of International Affairs, the offender shall be transported by the Department of Corrections to the federal district court for a verification hearing to ensure the offender consents to the international transfer.

(2) The Department of Corrections shall then relinquish jurisdiction over the offender to the United States Department of Justice.

Enacted by Chapter 324, 1990 General Session

77-28c-101. Title.

This chapter is known as the "Interstate Compact for Adult Offender Supervision."

Enacted by Chapter 45, 2001 General Session

77-28c-102. Preamble.

PREAMBLE

Whereas: The Interstate Compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the legislature to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

Enacted by Chapter 45, 2001 General Session

77-28c-103. Compact.

ARTICLE I
PURPOSE

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the by-laws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches, and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and by-laws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

ARTICLE II
DEFINITIONS

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles

treated as adults by court order, statute, or operation of law.

(2) "By-laws" mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the state council under this compact.

(4) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article IV of this compact.

ARTICLE III
THE COMPACT COMMISSION

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision." The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of Commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who

are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its by-laws for such additional, ex-officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the by-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws, and as directed by the Interstate Commission; and performs other duties as directed by the Commission or set forth in the by-laws.

ARTICLE IV
THE STATE COUNCIL

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable by-laws governing the management and

operation of the Interstate Commission.

(2) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

(14) To sue and be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the Interstate movement of offenders for officials involved in such activity.

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) By-laws. The Interstate Commission shall, by a majority of the members,

within 12 months of the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the by-laws shall exclusively govern the personnel policies and programs of the Interstate Commission; and

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff.

(1) The Interstate Commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the by-laws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. The Interstate Commission shall maintain its corporate books and records in accordance with the by-laws.

(d) Qualified Immunity, Defense, and Indemnification.

(1) The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official

capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The Interstate Commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

(3) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee, or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the by-laws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional

meetings.

(e) The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act," 5 U.S.C. Section 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the Interstate movement of offenders as directed through its by-laws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VIII
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. Section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. App. 2, Section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule, stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within 12 months after the first meeting must at a minimum include:

(i) notice to victims and opportunity to be heard;

(ii) offender registration and compliance;

(iii) violations/returns;

(iv) transfer procedures and forms;

(v) eligibility for transfer;

(vi) collection of restitution and fees from offenders;

(vii) data collection and reporting;

(viii) the level of supervision to be provided by the receiving state;

(ix) transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(x) mediation, arbitration, and dispute resolution.

(f) The existing rules governing the operation of the previous compact superceded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(g) Upon determination by the Interstate Commission that an emergency exists,

it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

ARTICLE IX
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

(a) Oversight.

(1) The Interstate Commission shall oversee the Interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution.

(1) The compacting states shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

(2) The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

(3) The Interstate Commission shall enact a by-law or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII (b) of this compact.

ARTICLE X
FINANCE

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission

pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

(a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default.

(1) If the Interstate Commission determines that any compacting state has at

any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the by-laws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(i) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(ii) Remedial training and technical assistance as directed by the Interstate Commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission by-laws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer, and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact and its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) Dissolution of Compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting

state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) Other Laws.

(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact.

(1) All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Enacted by Chapter 45, 2001 General Session

77-28c-104. Definitions -- Compact transfer application fee.

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Offender" has the same meaning as provided in Section 77-28c-103, Article II(a)(9).

(2) (a) Offenders desiring a transfer of supervision to another state under the Interstate Compact for Adult Offender Supervision shall apply to the department for

transfer.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the transfer of supervision of an offender.

(3) The department shall collect a fee of $50 from each offender applying for transfer of supervision to another state under the Interstate Compact for Adult Offender Supervision.

Amended by Chapter 382, 2008 General Session

77-28c-105. Compact for Adult Offender Supervision Restricted Account.

(1) There is created within the General Fund, a restricted account known as the Interstate Compact for Adult Offender Supervision Restricted Account.

(2) Money in the account shall consist of the compact application fee collected by the department for a transfer of supervision under the provisions of Subsection 77-28c-104(3).

(3) Upon appropriation by the Legislature, money in the account shall be used:

(a) to cover costs incurred in the collection of the fee; and

(b) for the administration of the Interstate Compact for Adult Offender Supervision, including the payment of the annual assessment levied under Subsection 77-28c-103, Article X(b).

Enacted by Chapter 239, 2004 General Session

77-28c-201. Authority of governor to join compact.

The governor of Utah is authorized and directed to execute a compact on behalf of this state with any other state or states joining the Interstate Compact for Adult Offender Supervision as provided in Section 77-28c-103.

Enacted by Chapter 45, 2001 General Session

77-29-3. Chapter inapplicable to incompetent persons.

The provisions of this chapter shall not apply to any person while adjudged to be incompetent to proceed under Chapter 15.

Enacted by Chapter 15, 1980 General Session

77-29-5. Interstate agreement on detainers -- Enactment into law -- Text of agreement.

The interstate agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing

speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of co-operative procedures. It is the further purpose of this agreement to provide such co-operative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final dispositions pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments,

informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to a paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons

therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in the article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a

suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The

provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Enacted by Chapter 15, 1980 General Session

77-29-6. Interstate agreement -- "Appropriate court" defined.

The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved.

Enacted by Chapter 15, 1980 General Session

77-29-7. Interstate agreement -- Duty of state agencies and political subdivisions to cooperate.

All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

Enacted by Chapter 15, 1980 General Session

77-29-8. Interstate agreement -- Application of habitual criminal law.

Nothing in the agreement on detainers shall be construed to require the application of the habitual criminal law of this state to any person as a result of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

Enacted by Chapter 15, 1980 General Session

77-29-9. Interstate agreement -- Escape of prisoner while in temporary custody.

Escape or attempt to escape from custody, whether within or without this state, while in the temporary custody of an authority of another state acting pursuant to the agreement on detainers shall constitute an offense against this state. Such escape or attempt to escape shall constitute an offense to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been released to temporary custody, and shall be punishable in the same manner as an escape or attempt to escape from said institution.

Enacted by Chapter 15, 1980 General Session

77-29-10. Interstate agreement -- Duty of warden.

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to deliver any inmate thereof whenever so required by the operation of the agreement on detainers.

Enacted by Chapter 15, 1980 General Session

77-29-11. Interstate agreement -- Attorney general as administrator and information agent.

The attorney general is hereby designated as the officer who shall be the central administrator of and information agent for the agreement on detainers as provided in Article VII of the agreement.

Enacted by Chapter 15, 1980 General Session

77-30-1. Definitions.

Where appearing in this act, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

Enacted by Chapter 15, 1980 General Session

77-30-2. Duty of governor to deliver person charged with crime upon demand by other state.

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime who has fled from justice and is found in this state.

Enacted by Chapter 15, 1980 General Session

77-30-3. Form of demand -- What documents presented must show.

No demand for the extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under Section 77-30-6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by

a copy of a judgment of conviction or of a sentence composed in execution, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

Enacted by Chapter 15, 1980 General Session

77-30-4. Governor may investigate demand.

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with a crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Enacted by Chapter 15, 1980 General Session

77-30-5. Extradition for prosecution before conclusion of trial or term in other state -- Return of person involuntarily leaving demanding state.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in Section 77-30-23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

Enacted by Chapter 15, 1980 General Session

77-30-6. Extradition for crime committed in another state by person while in this state.

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state, in the manner provided in section 77-30-3, with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Enacted by Chapter 15, 1980 General Session

77-30-7. Governor's warrant of arrest -- Recitals.

If the governor decides that the demand should be complied with he shall sign a warrant of arrest, which shall be sealed with the state seal, directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Enacted by Chapter 15, 1980 General Session

77-30-8. Execution of warrant of arrest.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

Enacted by Chapter 15, 1980 General Session

77-30-9. Authority of officers under warrant of arrest.

Every such peace officer or other person empowered to make the arrest shall have the same authority in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Enacted by Chapter 15, 1980 General Session

77-30-10. Time to apply for habeas corpus allowed.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

Enacted by Chapter 15, 1980 General Session

77-30-11. Penalty for disobedience of habeas corpus.

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to Section

77-30-10, shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned in the county jail not more than six months, or both.

Amended by Chapter 20, 1995 General Session

77-30-12. Officers entitled to use local jails.

The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent being chargeable with the expense of keeping; provided, such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

Enacted by Chapter 15, 1980 General Session

77-30-13. Fugitives from justice -- Warrant of arrest.

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and, except in cases arising under Section 77-30-6 that he has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and except in cases arising under Section 77-30-6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Enacted by Chapter 15, 1980 General Session

77-30-14. Arrest without warrant.

The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in Section 77-30-13, and thereafter his answer shall be heard as if he had been arrested on a warrant.

Amended by Chapter 20, 1995 General Session

77-30-15. Commitment pending arrest under warrant of governor.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under Section 77-30-6 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in the next section or until he shall be legally discharged.

Enacted by Chapter 15, 1980 General Session

77-30-16. Amount of bail.

(1) Except as provided in Subsection (2), a judge or magistrate in this state may admit the person arrested to bail by bond with sufficient sureties and in an amount he considers proper, conditioned for his appearance before him at a time specified in the bond and for his surrender, to be arrested upon the warrant of the governor of this state.

(2) A person arrested under Section 77-30-13 shall be admitted to bail as a matter of right, except the court has discretion to deny bail as provided in Utah Constitution Article I, Section 8, and when a judge or magistrate in the demanding state has ordered that the person charged be held without bail or the person has waived extradition.

(3) There is a rebuttable presumption that the bail set by the court or magistrate in the demanding state is the proper amount of bail in this state.

Amended by Chapter 199, 1997 General Session

77-30-17. Procedure when no arrest made under warrant of governor.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate

may again take bail for his appearance and surrender, as provided in Section 77-30-16, but within a period not to exceed 60 days after the date of such new bond.

Enacted by Chapter 15, 1980 General Session

77-30-18. Forfeiture of bail.

If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

Enacted by Chapter 15, 1980 General Session

77-30-19. Procedure if prosecution pending in this state.

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his discretion, may either surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

Enacted by Chapter 15, 1980 General Session

77-30-20. Governor not to inquire into guilt or innocence.

The guilt or innocence of the accused as to the crime of which he is charged in another state may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

Enacted by Chapter 15, 1980 General Session

77-30-21. Governor's warrant of arrest recalled or another issued.

The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

Enacted by Chapter 15, 1980 General Session

77-30-22. Fugitives from this state -- Issuance of governor's warrant.

Whenever the governor of this state shall demand a person charged with a crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the executive authority of any other state or from the chief justice or an associate justice of the superior court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

Enacted by Chapter 15, 1980 General Session

77-30-23. Fugitives from this state -- Applications for requisition for return.

(1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which escape was made shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or of the breach of the terms of his bail, probation, or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate stating the offense with which the accused is charged, or of the judgment or conviction, or of the sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the governor indicated by endorsement thereon and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

Amended by Chapter 306, 2007 General Session

77-30-24. Payment of expenses -- Extradition costs.

(1) When the punishment of the crime is the confinement of the defendant in prison, the expenses shall be paid out of the state treasury on the certificate of the governor and warrant of the auditor, and in all other cases they shall be paid out of the treasury of the county where the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made.

(2) Any person who is returned to the state under this chapter, and who is

convicted of, or pleads guilty or no contest to, the criminal charge or to a lesser criminal charge may, under Sections 76-3-201, 77-27-5, and 77-27-6, be required to make restitution to the appropriate governmental entities for the costs of his extradition.

Amended by Chapter 107, 1987 General Session

77-30-25. Person brought into state on extradition exempt from civil process -- Waiver of extradition proceedings -- Nonwaiver by this state.

(1) A person brought into this state by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

(2) (a) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in Sections 77-30-7 and 77-30-8, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in Section 77-30-10.

(b) If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, or shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(3) Nothing in this chapter shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for a crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, or shall any proceedings had under this chapter which result in or fail to result in extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

Amended by Chapter 306, 2007 General Session

77-30-26. Prosecution not limited to crime specified in requisition.

After a person has been brought back to this state by or after waiver of extradition proceedings he may be tried in this state for other crimes which he may be

charged with having committed here as well as that specified in the requisition for his extradition.

Enacted by Chapter 15, 1980 General Session

77-30-26.5. Person who has violated parole or probation agreement with demanding state.

(1) A law enforcement agency that is holding a person subject to extradition based on having allegedly violated the terms of the person's probation, parole, bail, or other terms of release in the demanding state shall immediately release the person to the authorized agent of the demanding state. A governor's warrant is not required in order to return the person if:

(a) the person has previously signed a waiver of extradition as a term of the person's probation, parole, bail, or other terms of release in the demanding state;

(b) the law enforcement agency holding the person has received:

(i) an authenticated copy of the prior waiver of extradition signed by the person; and

(ii) a photograph and fingerprints identifying the person as the person who signed the waiver.

(2) Utah may, prior to releasing a person to the authorized agent of the demanding state, prosecute the person for any criminal offense committed in Utah.

(3) This section does not affect or limit:

(a) the right of the person sought by the demanding state to return to the demanding state voluntarily and without governmental action;

(b) the authority of the law enforcement or parole officers of Utah or the demanding state; or

(c) any procedures regarding waiver of extradition under Title 77, Chapter 30, Extradition.

Enacted by Chapter 156, 2007 General Session

77-30-27. Uniformity of interpretation.

The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

Enacted by Chapter 15, 1980 General Session

77-30-28. Citation -- Uniform Criminal Extradition Act.

This act may be cited as the Uniform Criminal Extradition Act.

Enacted by Chapter 15, 1980 General Session

77-32-101. Indigent Defense Act.

This chapter is known as the "Indigent Defense Act."

Enacted by Chapter 354, 1997 General Session

77-32-201. Definitions.

For the purposes of this chapter:

(1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

(2) "Compelling reason" shall include one or more of the following circumstances relating to the contracting attorney:

(a) a conflict of interest;

(b) the contracting attorney does not have sufficient expertise to provide an effective defense of the indigent; or

(c) the legal defense is insufficient or lacks expertise to provide a complete defense.

(3) "Defense resources" means a competent investigator, expert witness, scientific or medical testing, or other appropriate means necessary, for an effective defense of an indigent, but does not include legal counsel.

(4) "Defense services provider" means a legal aid association, legal defender's office, regional legal defense association, law firm, attorney, or attorneys contracting with a county or municipality to provide legal defense and includes any combination of counties or municipalities to provide regional legal defense.

(5) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.

(6) "Legal aid association" means a nonprofit defense association or society that provides legal defense for indigent defendants.

(7) "Legal defender's office" means a division of county government created and authorized by the county legislative body to provide legal representation in criminal matters to indigent defendants.

(8) "Legal defense" means to:

(a) provide defense counsel for each indigent who faces the potential deprivation of the indigent's liberty;

(b) afford timely representation by defense counsel;

(c) provide the defense resources necessary for a complete defense;

(d) assure undivided loyalty of defense counsel to the client;

(e) provide a first appeal of right; and

(f) prosecute other remedies before or after a conviction, considered by defense counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

(9) "Participating county" means a county which has complied with the provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

(10) "Regional legal defense" means a defense services provider which provides legal defense to any combination of counties or municipalities through an interlocal cooperation agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection 77-32-306(3).

(11) "Serious offense" means a felony or capital felony.

Amended by Chapter 180, 2012 General Session

77-32-202. Procedure for determination of indigency -- Standards.

(1) A determination of indigency or continuing indigency of any defendant may be made by the court at any stage of the proceedings.

(2) (a) Any defendant claiming indigency who is charged with a crime the penalty of which is a class A misdemeanor or serious offense shall file with the court a fully complete affidavit verified by a notary or other person authorized by law to administer an oath and file a copy of that affidavit with the prosecuting entity. The affidavit shall contain the factual information required in this section and by the court.

(b) A defendant claiming indigency who is charged with a crime the penalty of which is less than a class A misdemeanor is not required to comply with the requirements of Subsection (2)(a) and Subsection (4).

(3) (a) "Indigency" means that a person:

(i) does not have sufficient income, assets, credit, or other means to provide for the payment of legal counsel and all other necessary expenses of representation without depriving that person or the family of that person of food, shelter, clothing, and other necessities; or

(ii) has an income level at or below 150% of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services; and

(iii) has not transferred or otherwise disposed of any assets since the commission of the offense with the intent of establishing eligibility for the appointment of counsel under this chapter.

(b) In making a determination of indigency, the court shall consider:

(i) the probable expense and burden of defending the case;

(ii) the ownership of, or any interest in, any tangible or intangible personal property or real property, or reasonable expectancy of any such interest;

(iii) the amounts of debts owned by the defendant or that might reasonably be incurred by the defendant because of illness or other needs within the defendant's family;

(iv) number, ages, and relationships of any dependents;

(v) the reasonableness of fees and expenses charged to the defendant by the defendant's attorney and the scope of representation undertaken where the defendant is represented by privately retained defense counsel; and

(vi) other factors considered relevant by the court.

(4) (a) Upon making a finding of indigence, the court shall enter the findings on the record and enter an order assigning a defense services provider to represent the defendant in the case.

(b) Upon finding indigence when the defendant has privately retained counsel, the court, subject to Section 77-32-303, shall enter the findings into the record and issue an order directing the county or municipality to coordinate the providing of defense resources as appropriate.

(c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor and to the county clerk or municipal recorder.

(5) If the county or municipality providing the defense services provider has any objections to or concerns with the finding of indigency and assignment of a defense services provider or the continuing of indigency status and assignment of a defense

services provider, it shall file notice with the court and a hearing shall be scheduled to review the findings and give the county or municipality the opportunity to present evidence and arguments as to the reasons the finding of indigency should be reversed and the court shall proceed as provided in Section 77-32-302.

(6) (a) If the trial court finds within one year after the determination of indigency that any defendant was erroneously or improperly determined to be indigent, the county or municipality may proceed against that defendant for the reasonable value of the services rendered to the defendant, including all costs paid by the county or municipality in providing the legal defense.

(b) Subsection (6)(a) does not affect any restitution required of the defendant by the court pursuant to Chapter 32a, Defense Costs.

(c) A defendant claiming indigency has a continuing duty to inform the court of any material changes or change in circumstances that may affect the determination of his eligibility for indigency.

(d) Any person who intentionally or knowingly makes a material false statement or omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.

Amended by Chapter 245, 2013 General Session

77-32-301. Minimum standards for defense of an indigent.

(1) Each county, city, and town shall provide for the legal defense of an indigent in criminal cases in the courts and various administrative bodies of the state in accordance with legal defense standards as defined in Subsection 77-32-208(8).

(2) (a) A county or municipality which contracts with a defense services provider shall provide that all legal defense elements be included as a single package of legal defense services made available to indigents, except as provided in Sections 77-32-302 and 77-32-303.

(b) When needed to avoid a conflict of interest between:

(i) trial counsel and counsel on appeal, a defense services provider contract shall also provide for separate trial and appellate counsel; and

(ii) counsel for co-defendants, a defense services provider contract shall also provide for separate trial counsel.

(c) If a county or municipality contracts to provide all legal defense elements as a single package, a defendant may not receive funding for defense resources unless represented by publicly funded counsel or as provided in Subsection 77-32-303(2).

Amended by Chapter 180, 2012 General Session

77-32-302. Assignment of counsel on request of indigent or order of court.

(1) The defense services provider shall be assigned to represent each indigent and shall provide the legal defense services necessary for an effective defense, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

(a) the indigent requests legal defense; or

(b) the court on its own motion or otherwise orders legal defense services and the defendant does not affirmatively waive or reject on the record the opportunity to be

provided legal defense.

(2) (a) If a county responsible for providing indigent legal defense has established a county legal defender's office and the court has received notice of the establishment of the office, the court shall assign to the county legal defender's office the responsibility to defend indigent defendants within the county and provide defense resources.

(b) If the county or municipality responsible to provide for the legal defense of an indigent has arranged by contract to provide those services through a defense services provider, and the court has received notice or a copy of the contract, the court shall assign the defense services provider named in the contract to provide legal defense.

(c) If no county or municipal defense services provider contract exists, the court shall select and assign a legal defense provider.

(d) If the court considers the assignment of a noncontracting legal defense provider to an indigent defendant despite the existence of a defense services provider contract and the court has a copy or notice of the contract, before the court may make the assignment, it shall:

(i) set the matter for a hearing;

(ii) give proper notice of the hearing to the attorney of the responsible county or municipality and county clerk or municipal recorder; and

(iii) make findings that there is a compelling reason to appoint a noncontracting attorney.

(e) The indigent's preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting defense services provider.

(3) The court may make a determination of indigency at any time.

Amended by Chapter 180, 2012 General Session

77-32-303. Standard for court to appoint noncontracting attorney or order the provision of defense resources -- Hearing.

(1) If a county or municipality has contracted or otherwise provided for a defense services provider, the court may not appoint a noncontracting attorney under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, unless the court:

(a) conducts a hearing with proper notice to the county clerk or municipal recorder, with a copy of the notice provided to the prosecutor, to consider the authorization or designation of a noncontract attorney; and

(b) makes a finding that there is a compelling reason to authorize or designate a noncontracting attorney for the indigent defendant.

(2) Except as provided in Subsection (3), if a county or municipality has contracted or otherwise provided for a defense services provider, the court may not order under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, and the county or municipality may not provide defense resources for a defendant who has retained private counsel.

(3) The court may order, and the county or municipality may provide, defense resources to a defendant represented by private counsel only if:

(a) the court conducts a hearing with proper notice to the county clerk or

municipal recorder, with a copy of the notice provided to the prosecutor;

(b) the court conducts an in camera review of the defense contract, a full accounting of the defense retainer, anticipated costs of defense resources and other relevant defense records and finds by clear and convincing evidence all of the following:

(i) the defendant would be prejudiced by the substitution of a contracted defense services provider and any prejudice cannot be remedied by a continuance or other alternative means;

(ii) at the time of retention of private counsel, the defendant and attorney entered into a written contract which provided that the defendant had the means to pay for fees and defense resources;

(iii) there has been an unforseen change in circumstances which requires defense resources beyond the defendant's ability to pay; and

(iv) all of the above representations are made in good faith and are not calculated to allow the defendant or defense attorney to avoid the requirements of this section.

(4) The court may not order the defense services provider to act as co-counsel with a privately retained legal counsel as a means of circumventing the requirements of this section.

Amended by Chapter 180, 2012 General Session

77-32-304. Duties of assigned counsel -- Compensation.

(1) When representing an indigent, the assigned counsel shall:

(a) counsel and defend the indigent at every stage of the proceeding following assignment; and

(b) file any first appeal of right or other remedy before or after conviction that the assigned counsel considers to be in the interest of justice, except for other and subsequent discretionary appeals or discretionary writ proceedings.

(2) An assigned counsel may not represent an indigent in any discretionary appeal or action for a discretionary writ, other than in a meaningful first appeal of right to assure the indigent an adequate opportunity to present the indigent's claims fairly in the context of the appellate process of this state.

(3) An assigned counsel for an indigent shall be entitled to compensation upon:

(a) approval of the district court where the original trial was held;

(b) a showing that:

(i) the indigent has been denied a constitutional right; or

(ii) there was newly discovered evidence that would show the indigent's innocence; and

(c) a clear showing that the legal services rendered by counsel were:

(i) other than that required under this chapter or under a separate fee arrangement; and

(ii) necessary for the adequate defense of the indigent and not for the purpose of delaying the judgment of the original trier of fact.

Amended by Chapter 180, 2012 General Session

77-32-304.5. Reasonable compensation for defense counsel for indigents.

(1) This section does not apply to any attorney acting as a defense services provider or otherwise under contract with the county or municipality for defense of an indigent person.

(2) (a) The county or municipality shall pay reasonable compensation to any attorney assigned by the court under Subsection 77-32-306 at the conclusion of the representation or any segment of the representation, as provided in Subsections (2)(b), (c), (d), and (e):

(i) before the district or justice courts, including interlocutory appeals; and

(ii) before the appellate court on a first appeal of right.

(b) The legislative body of each county and municipality shall establish and annually review guidelines for the rate of compensation, taking into account:

(i) the nature and complexity of the case;

(ii) the competency and years of experience in criminal defense of the assigned attorney;

(iii) the adjusted net hourly rate incurred by the county or municipality for a prosecutor or public defender of equivalent experience and competency; and

(iv) the prevailing rates within the judicial district for comparable services.

(c) If the legislative body of a county or municipality does not establish the rate guidelines, the rate of compensation shall be determined by the trial judge or a judge other than the trial judge if requested by:

(i) the assigned attorney; or

(ii) the county or municipality.

(d) If the assigned attorney disagrees with the amount of compensation paid or contemplated for payment by the county or municipality, the assigned attorney shall nonetheless continue to represent the indigent defendant and may file a claim against:

(i) the county pursuant to Section 17-50-401 or 17-50-401.1, as applicable, in which event the period for a denial by the county shall be 20 days; or

(ii) the municipality pursuant to Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

(e) In determining the reasonable compensation to be paid to defense counsel under Subsections (2)(c) and (d), the court shall consider the factors contained in Subsections (2)(b)(i) through (iv).

(f) The total compensation in a noncapital case may not, without prior court approval following a hearing, exceed:

(i) $3,500 for each assigned attorney in a case in which one or more felonies is charged;

(ii) $1,000 for each assigned attorney in a case in which only misdemeanors or lesser offenses are charged; or

(iii) $2,500 for each assigned attorney in the representation of an indigent in an appellate court on a first appeal of right.

Amended by Chapter 17, 2012 General Session
Amended by Chapter 180, 2012 General Session

77-32-305. Expenses of printing briefs, depositions, and transcripts.

The state, county, or municipal agency that prosecuted the indigent at trial is responsible for the expenses of printing or typewriting briefs on any first appeal of right, including expenses of depositions and other transcripts.

Renumbered and Amended by Chapter 354, 1997 General Session

77-32-305.5. Reimbursement of extraordinary expense.

(1) For the purposes of this section, an "extraordinary expense" means the collective expense which exceeds $500 for defense resources or any particular service or item such as experts, investigators, surveys, or demonstrative evidence.

(2) The county or municipality shall reimburse expenses, exclusive of overhead and extraordinary expense not approved by the court in accordance with this chapter, reasonably incurred by assigned attorneys for indigent defendants through a contracted defense services provider or if so ordered by the court based on a hearing held in accordance with Subsections 77-32-303(2) and (3), or for an appointed counsel under Section 77-32-304.5.

(3) The assigned attorney shall file a motion with the court for approval of the proposed expenditure for any extraordinary expense before the expense is incurred. The motion shall be heard and ruled upon by a judge other than the trial judge if so requested by either party or upon the motion of the trial judge.

Amended by Chapter 180, 2012 General Session

77-32-306. County or municipal legislative body to provide legal defense.

(1) The county or municipal legislative body shall either:

(a) contract with a defense services provider; or

(b) authorize the court to provide the services prescribed by this chapter by assigning a qualified attorney in each case.

(2) A county may create a county legal defender's office to provide for the legal defense as prescribed by this chapter.

(3) A county legal defender's office may, through the county legislative body contract with other counties and municipalities within a judicial district to provide the legal services as prescribed.

(4) Counties and municipalities are encouraged to enter into interlocal cooperation agreements pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, for the provision of legal defense, including multiple counties and municipalities contracting with either a private defense services provider or with a legal defender's office. An interlocal agreement may provide for:

(a) the creation of or contract with a private defense services provider, as defined in Subsection 77-32-201(4);

(b) multiple counties or municipalities to contract with a county legal defender's office, as defined in Subsection 77-32-201(7); or

(c) the creation of an interlocal entity under the provisions of Section 11-13-203.

(5) When a county or municipality has contracted under Subsection (1)(a) or a county has created a legal defender's office as provided under Subsection (2) to provide the legal defense resources required by this chapter, the legal services provider

is the exclusive source from which the legal defense may be provided, unless the court finds a compelling reason for the appointment of noncontracting attorneys and defense resources, under the provisions of Section 77-32-302 or 77-32-303, in which case the judge shall state the compelling reason and the findings of the hearing held under Subsections 77-32-303(2) and (3) on the record.

(6) A county or municipality may, by ordinance, provide for some other means which are constitutionally adequate for legal defense of indigents.

Amended by Chapter 180, 2012 General Session

77-32-307. Expenditures of county or municipal funds declared proper -- Tax levy authorized.

(1) An expenditure by any county or municipality is considered a proper use of public funds if the expenditure is necessary to carry out the purposes defined in this chapter.

(2) A donation to a nonprofit legal aid or other association charged with the duty to provide the services is a proper use of public funds.

(3) Any county or municipality of the state is authorized to levy and collect taxes to meet the requirements of this chapter.

Amended by Chapter 180, 2012 General Session

77-32-308. Pro bono criminal representation -- Liability limits.

Counsel assigned by a court to represent an indigent in criminal, post-conviction, or habeas corpus proceedings is immune from suit if the attorney provides the legal services:

(1) at no cost; or

(2) for only a substantially reduced cost that is applied to, but does not cover, expenses of the service; and

(3) without gross negligence or willful misconduct.

Renumbered and Amended by Chapter 354, 1997 General Session

77-32-401. Indigent Defense Funds Board -- Members -- Administrative support.

(1) There is created within the Division of Finance the Indigent Defense Funds Board composed of the following nine members:

(a) two members who are current commissioners or county executives of participating counties appointed by the board of directors of the Utah Association of Counties;

(b) one member at large appointed by the board of directors of the Utah Association of Counties;

(c) two members who are current county attorneys of participating counties appointed by the Utah Prosecution Council;

(d) the director of the Division of Finance or his designee;

(e) one member appointed by the Administrative Office of the Courts; and

(f) two members who are private attorneys engaged in or familiar with the criminal defense practice appointed by the members of the board listed in Subsections (1)(a) through (e).

(2) Members shall serve four-year terms. One of the county commissioners and one of the county attorneys appointed to the initial board shall serve two-year terms, and the remaining other members of the initial board shall be appointed for four-year terms. After the initial two-year terms of the county commissioner and county attorney, those board positions shall have four-year terms.

(3) A vacancy is created if a member appointed under:

(a) Subsection (1)(a) no longer serves as a county commissioner or county executive; or

(b) Subsection (1)(c) no longer serves as a county attorney.

(4) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(5) The board may contract for administrative support for up to $15,000 annually to be paid proportionally from each fund.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) Per diem and expenses for board members shall be paid proportionally from each fund.

(8) Five members shall constitute a quorum and, if a quorum is present, the action of a majority of the members present shall constitute the action of the board.

Amended by Chapter 180, 2012 General Session

77-32-401.5. Interim board -- Members -- Administrative support -- Duties.

(1) Until the Indigent Defense Funds Board authorized by Section 77-32-401 is constituted after achieving the number of participating counties required by Sections 77-32-604 and 77-32-704, an interim board may be created within the Division of Finance composed of the following three members:

(a) a county commissioner from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties;

(b) a county attorney from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties; and

(c) a representative appointed by the Administrative Office of the Courts.

(2) The Division of Finance shall provide administrative support to the interim board.

(3) (a) Members shall serve until the Indigent Defense Funds Board is constituted.

(b) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The per diem and travel expenses for board members under Subsection (4) shall be paid from the Indigent Inmate Trust Fund in Section 77-32-502.

(6) Until the Indigent Defense Funds Board is constituted, the interim board shall be authorized to carry out any responsibility provided to the Indigent Defense Funds Board in statute as it relates to Chapter 32, Part 5, Indigent Inmates.

(7) The action by two members present shall constitute the action of the board.

Amended by Chapter 286, 2010 General Session

77-32-402. Duties of board.

(1) The board shall:

(a) establish rules and procedures for the application by counties for disbursements, and the screening and approval of the applications for money from the:

(i) Indigent Inmate Trust Fund established in Part 5;

(ii) Indigent Capital Defense Trust Fund established in Part 6; and

(iii) Indigent Felony Defense Trust Fund established in Part 7;

(b) receive, screen, and approve or disapprove the application of counties for disbursements from each fund;

(c) calculate the amount of the annual contribution to be made to the funds by each participating county;

(d) prescribe forms for the application for money from each fund;

(e) oversee and approve the disbursement of money from each fund as provided in Sections 77-32-401, 77-32-502, 77-32-601, and 77-32-701;

(f) establish its own rules of procedure, elect its own officers, and appoint committees of its members and other people as may be reasonable and necessary;

(g) negotiate, enter into, and administer contracts with legal counsel, qualified under and meeting the standards consistent with this chapter, to provide defense counsel services to:

(i) indigents prosecuted in participating counties for serious offenses in violation of state law; and

(ii) an indigent inmate who is incarcerated in certain counties.

(2) The board may provide to the court a list of attorneys qualified under Utah Rules of Criminal Procedure, Rule 8, with which the board has a preliminary contract to defend indigent cases for an assigned rate.

Enacted by Chapter 354, 1997 General Session

77-32-501. Contracts for defense of indigent inmates -- Qualifications -- Prosecutorial duties.

(1) The board shall enter into contracts with qualified legal defense counsel to provide defense counsel services for an indigent inmate who is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501, is charged with having committed a crime within that facility, and will require defense counsel.

(2) Payment for the representation, costs, and expenses of legal defense counsel shall be made from the Indigent Inmate Trust Fund as provided in Section 77-32-502.

(3) The defense counsel shall maintain the minimum qualifications as provided in Section 77-32-301.

(4) The county attorney or district attorney of a county of the third, fourth, fifth, or sixth class shall function as the prosecuting entity.

(5) (a) The county of the third, fourth, fifth, or sixth class where a state prison is located may impose an additional tax levy by ordinance at .0001 per dollar of taxable value in the county.

(b) If the county governing body imposes the additional tax levy by ordinance, the money shall be deposited in the Indigent Inmate Trust Fund as provided in Section 77-32-502 to fund the purposes of this section.

(c) Upon notification that the fund has reached the amount specified in Subsection 77-32-502(6), the county shall deposit money derived from the levy into a county account used exclusively to provide defense counsel and defense related services for indigent defendants.

(d) A county that chooses not to impose the additional levy by ordinance may not receive any benefit from the Indigent Inmate Trust fund.

Amended by Chapter 80, 2009 General Session

77-32-502. Indigent Inmate Trust Fund -- Creation.

(1) There is created a private-purpose trust fund known as the "Indigent Inmate Trust Fund" to be disbursed by the Division of Finance at the direction of the board and in accordance with contracts made under Section 77-32-402.

(2) Money deposited in this trust fund only shall be used:

(a) to pay for the representation, costs, and expenses of legal defense counsel for an indigent inmate in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501 who is charged with having committed a crime within the facility, and who will require defense counsel; and

(b) for administrative costs pursuant to Section 77-32-401.

(3) The trust fund consists of:

(a) proceeds received from counties that impose the additional tax levy by ordinance under Subsection 77-32-501(5) which shall be the total county obligation for payment of costs listed in Subsection (2) for defense of indigent inmates;

(b) appropriations made to the fund by the Legislature; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and

interest accruing to the fund.

(5) In any calendar year in which the fund runs a deficit, or is projected to run a deficit, the board shall request a supplemental appropriation from the Legislature in the following general session to pay for the deficit. The state shall pay any or all of the reasonable and necessary money for the deficit into the Indigent Inmate Trust Fund.

(6) The fund shall be capped at $1,000,000.

(7) The Division of Finance shall notify all contributing counties when the fund approaches $1,000,000 and provide each county with the amount of the balance in the fund.

(8) Upon notification by the Division of Finance that the fund is near the limit imposed in Subsection (6), the counties may contribute enough money to enable the fund to reach $1,000,000 and discontinue contributions until notified by the Division of Finance that the balance has fallen below $1,000,000, at which time counties that meet the requirements of Section 77-32-501 shall resume contributions.

Amended by Chapter 80, 2009 General Session

77-32-601. Establishment of Indigent Aggravated Murder Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense Trust Fund.

(2) (a) There is established a private-purpose trust fund known as the "Indigent Aggravated Murder Defense Trust Fund."

(b) The fund shall be disbursed by the Division of Finance at the direction of the board and subject to this chapter.

(3) The fund consists of:

(a) money received from participating counties as provided in Sections 77-32-602 and 77-32-603;

(b) appropriations made to the fund by the Legislature as provided in Section 77-32-603; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving aggravated murder.

(6) Money allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for aggravated murder in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Amended by Chapter 303, 2011 General Session

77-32-602. County participation.

(1) (a) Any county may participate in the fund subject to the provisions of this chapter. Any county that chooses not to participate, or is not current in its contributions, is ineligible to receive money from the fund.

(b) The board may revoke a county's participation in the fund if the county fails to pay its assessments when due.

(2) To participate in the fund, the legislative body of a county shall:

(a) adopt a resolution approving participation in the fund and committing that county to fulfill the assessment requirements as set forth in Subsection (3) and Section 77-32-603; and

(b) submit a certified copy of that resolution together with an application to the board.

(3) By January 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 77-32-603.

(4) Any participating county may withdraw from participation in the fund upon:

(a) adoption by its legislative body of a resolution to withdraw; and

(b) notice to the board by January 1 of the year prior to withdrawal.

(5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay its assessments when due, shall forfeit the right to:

(a) any previously payed assessment;

(b) relief from its obligation to pay its assessment during the period of its participation in the fund; and

(c) any benefit from the fund, including reimbursement of costs which accrued after the last day of the period for which the county has paid its assessment.

Amended by Chapter 333, 1998 General Session

77-32-603. County and state obligations.

(1) (a) Except as provided in Subsection (1)(b), each participating county shall pay into the fund annually an amount calculated by multiplying the average of the percent of its population to the total population of all participating counties and of the percent its taxable value of the locally and centrally assessed property located with that county to the total taxable value of the locally and centrally assessed property to all participating counties by the total fund assessment for that year to be paid by all participating counties as is determined by the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any calendar year.

(b) The fund minimum shall be equal to or greater than 50 cents per person of all counties participating.

(c) The amount paid by the participating county pursuant to Subsection (1) shall be the total county obligation for payment of costs pursuant to Section 77-32-601.

(2) (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment in addition to the assessment provided in Subsection (1).

(b) The equity payment shall be determined by the board and represent what the county’s equity in the fund would be if the county had made assessments into the

fund for each of the previous two years.

(3) If the fund balance after contribution by the state and participating counties is insufficient to replenish the fund annually to at least $250,000, the board by a majority vote may terminate the fund.

(4) If the fund is terminated, all remaining funds shall continue to be administered and disbursed in accordance with the provision of this chapter until exhausted, at which time the fund shall cease to exist.

(5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the deficit.

(b) In the calendar year following a deficit year, the board shall increase the assessment required by Subsection (1) by an amount at least equal to the deficit of the previous year, which combined amount becomes the base assessment until another deficit year occurs.

(6) In any calendar year in which the fund runs a deficit, or is projected to run a deficit, the board shall request a supplemental appropriation to pay for the deficit from the Legislature in the following general session. The state shall pay any or all of the reasonable and necessary money for the deficit into the Indigent Capital Defense Trust Fund.

Amended by Chapter 333, 1998 General Session

77-32-604. Application and qualification for fund money.

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in the defense of an indigent for capital felonies in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, 1998.

(3) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection 77-32-602(2).

Amended by Chapter 209, 2001 General Session

77-32-701. Establishment of Indigent Felony Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Felony Defense Trust Fund.

(2) (a) There is established a private-purpose trust fund known as the "Indigent Felony Defense Trust Fund."

(b) The fund shall be disbursed by the Division of Finance at the direction of the board and subject to the provisions of this chapter.

(3) The fund consists of:

(a) money received from participating counties as provided in Sections 77-32-702 and 77-32-703;

(b) a one-time appropriation by the Legislature; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with the financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving felony offenses.

(6) Money allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for a felony in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Amended by Chapter 303, 2011 General Session

77-32-702. County participation.

(1) (a) Any county may participate in the fund subject to the provisions of this chapter. Any county that chooses not to participate, or is not current in its contributions, is ineligible to receive money from the fund.

(b) The board may revoke a county's participation in the fund if the county fails to pay its assessments when due.

(2) To participate in the fund, the legislative body of a county shall:

(a) adopt a resolution approving participation in the fund and committing that county to fulfill the assessment requirements as set forth in Subsection (3) and Section 77-32-703; and

(b) submit a certified copy of that resolution together with an application to the board.

(3) By January 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 77-32-703.

(4) Any participating county may withdraw from participation in the fund upon:

(a) adoption by its legislative body of a resolution to withdraw; and

(b) notice to the board by January 1 of the year prior to withdrawal.

(5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay its assessments when due, shall forfeit the right to:

(a) any previously payed assessment;

(b) relief from its obligation to pay its assessment during the period of its participation in the fund; and

(c) any benefit from the fund, including reimbursement of costs which accrued after the last day of the period for which the county has paid its assessment.

(6) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection (2).

Amended by Chapter 333, 1998 General Session

77-32-703. Computing participating county assessments.

(1) The board shall determine the amount annually each county shall pay into the fund.

(2) (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (1).

(b) The equity payment shall be determined by the board and represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous two years.

(3) (a) If the fund runs a deficit during any calendar year, the participating counties shall pay an amount equal to the deficit in the fund by the end of the first quarter of the following year.

(b) In the calendar year following a deficit year, the board shall increase the assessment required by Subsection (1) by an amount at least equal to the deficit of the previous year, which combined amount becomes the base assessment until another deficit year occurs.

(4) After the initial year of the fund, if the participating counties are unable to replenish the fund annually to at least $200,000, the board by a majority vote may terminate the fund.

(5) If the fund is terminated, all remaining funds shall continue to be administered and disbursed in accordance with the provision of this chapter until exhausted, at which time the fund shall cease to exist.

Amended by Chapter 333, 1998 General Session

77-32-704. Application and qualification for fund money.

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in excess of $20,000 in the defense of an indigent for felony offenses in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, 1998.

(3) (a) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(b) Fees for counsel and reimbursement for defense costs of an indigent are as

follows:

(i) $20,000 or more shall be paid from the fund; and

(ii) up to $20,000 shall be paid by the participating county.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection 77-32-702(2).

Amended by Chapter 333, 1998 General Session

77-32a-1. Convicted defendant may be required to pay costs.

In a criminal action the court may require a convicted defendant to pay costs.

Amended by Chapter 35, 2002 General Session

77-32a-2. Costs -- What constitute.

Costs shall be limited to expenses specially incurred by the state or any political subdivision in investigating, searching for, apprehending, and prosecuting the defendant, including attorney fees of counsel assigned to represent the defendant, interpreter fees, and investigators' fees. Costs cannot include expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Costs cannot include attorneys' fees for prosecuting attorneys.

Amended by Chapter 21, 1999 General Session

77-32a-3. Ability to pay considered.

The court shall not include in the judgment a sentence that a defendant pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose and that restitution be the first priority.

Enacted by Chapter 15, 1980 General Session

77-32a-4. Petition for remission of payment of costs.

A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under Section

77-32a-5.

Enacted by Chapter 15, 1980 General Session

77-32a-5. Time and method of payment.

When a defendant is sentenced to pay costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the costs shall be payable forthwith.

Enacted by Chapter 15, 1980 General Session

77-32a-6. Payment as condition of probation or suspended sentence.

When a defendant sentenced to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of costs a condition of probation or suspension of sentence.

Enacted by Chapter 15, 1980 General Session

77-32a-7. Default in payment as contempt -- Order to show cause -- Warrant of arrest.

When a defendant sentenced to pay costs defaults in the payment thereof or of any installment, the court on motion of the attorney general or the county attorney or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue an order to show cause or a warrant of arrest for his appearance.

Enacted by Chapter 15, 1980 General Session

77-32a-8. Default in payment as contempt -- What constitutes contempt -- Imprisonment.

Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the costs or a specified part thereof, are paid.

Enacted by Chapter 15, 1980 General Session

77-32a-9. Costs imposed on corporation or association -- Duty to pay -- Contempt.

When costs are imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the costs from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in Section 77-32a-8 of this act.

Enacted by Chapter 15, 1980 General Session

77-32a-10. Imprisonment for contempt -- Limitations.

The term of imprisonment for contempt for nonpayment of costs shall be set forth in the commitment order, and shall not exceed one day for each $25 of the costs, 30 days if the costs were imposed upon conviction of a misdemeanor, or six months in the case of a felony, whichever is the shorter period. A person committed for nonpayment of costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

Enacted by Chapter 15, 1980 General Session

77-32a-11. Default not constituting contempt -- Relief allowed.

If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the costs or the unpaid portion thereof in whole or in part.

Enacted by Chapter 15, 1980 General Session

77-32a-12. Collection of payment in default -- Execution.

A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the costs has actually been collected.

Enacted by Chapter 15, 1980 General Session

77-32a-13. Docketing judgment for costs.

A judgment that the defendant pay costs may be docketed in the same manner as a judgment in a civil action.

Enacted by Chapter 15, 1980 General Session

77-32a-14. Verified statement of time and expenses of counsel for indigent defendants.

The court may require a verified statement of time and expenses from appointed counsel or the nonprofit legal aid or other association providing counsel to convicted indigent defendants in order to establish the costs, if any, which will be included in the judgment.

Enacted by Chapter 15, 1980 General Session

77-33-1. Definitions.

As used in this act:

(1) "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(2) "Penal institution" includes a jail, prison, penitentiary, house of correction, or other place of penal detention; and

(3) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory of the United States.

Enacted by Chapter 15, 1980 General Session

77-33-2. Summoning prisoner in this state to testify in another state -- Certificate of out-of-state judge.

A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

Enacted by Chapter 15, 1980 General Session

77-33-3. Summoning prisoner in this state to testify in another state -- Hearing -- Issuance of order to attend.

If at the hearing the judge determines (1) that the witness may be material and necessary, (2) that his attending and testifying are not adverse to the interest of this state or to the health or legal rights of the witness, (3) that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order, and (4) that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached, (a) directing the witness to attend and testify, (b) directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and (c) prescribing such conditions as the judge shall determine.

Enacted by Chapter 15, 1980 General Session

77-33-4. Summoning prisoner in this state to testify in another state -- Order to provide for return, safeguards on custody, and payment of expenses.

The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the

witness, and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

Enacted by Chapter 15, 1980 General Session

77-33-5. Rendition procedure inapplicable to person confined as insane or having a mental illness or under sentence of death.

This act does not apply to any person in this state confined as insane or as having a mental illness or under sentence of death.

Amended by Chapter 366, 2011 General Session

77-33-6. Prisoner in another state summoned to testify in this state -- Certificate of judge.

If a person confined in a penal institution in any state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in another state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

Enacted by Chapter 15, 1980 General Session

77-33-7. Prisoner in another state summoned to testify in this state -- Order of compliance with terms and conditions prescribed by out-of-state judge.

The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

Enacted by Chapter 15, 1980 General Session

77-33-8. Exemption of prisoner from another state from arrest or service of process.

If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, he shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this state under the order.

Enacted by Chapter 15, 1980 General Session

77-33-9. Uniformity of interpretation.

This act shall be so construed as to effectuate its general purpose to make

uniform the law of those states which enact it.

Enacted by Chapter 15, 1980 General Session

77-33-10. Citation -- Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act.

This act may be cited as the "Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act."

Enacted by Chapter 15, 1980 General Session

77-34-1. Citation -- Utah Interstate Furlough Compact.

This chapter may be cited as the "Utah Interstate Furlough Compact."

Enacted by Chapter 15, 1980 General Session

77-34-2. Definitions.

As used in this compact:

(1) "State" means a state in the United States, the United States of America, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(2) "Sending state" means a state which is party to this compact in which conviction or commitment was had except if confinement be in another state, pursuant to the Interstate Corrections Compact, in which event the sending state shall be determined by contract between the parties of the Interstate Corrections Compact agreement;

(3) "Receiving state" means a state which is party to this compact to which an inmate is sent for furlough;

(4) "Institution" means a penal or correctional facility, including all those facilities normally used by adult correctional agencies for the care and custody of inmates whether or not such facilities are owned or operated by the agencies;

(5) "Relative" means spouse, child (including stepchild, adopted child, or foster child), parents (including stepparents, adoptive parents, or foster parents), brothers, sisters, and grandparents;

(6) "Interstate furlough" means any out-of-state leave of an inmate for a designated period in accordance with the requirements established by the appropriate officials of the sending state;

(7) "Appropriate official" means a person designated by the sending state to grant furloughs or by the receiving state to accept or reject furloughs pursuant to this compact;

(8) "Authorized person" means a person designated by law or appointment for purposes of escorting, transferring, or retaining a furloughed inmate;

(9) "Medical emergency" means any illness, injury, incapacity, or condition, physical or mental, of such a nature and gravity that timely and immediate treatment of and attention to the illness is required to prevent permanent injury, substantial harm, or death, and which cannot be adequately treated or attended to, in a timely manner, by

the sending state;

(10) "Escorted interstate furlough" means the transference of an inmate in emergency situations, who does not meet the furlough requirements of the sending state to a state which is party to the compact under escort or guard of an authorized person of the sending state;

(11) "Escapee" means an inmate who is on interstate furlough, pursuant to this compact, and fails to return at the prescribed time to the sending state or becomes a known absconder during the period of his furlough; and

(12) "Violator" means an inmate who is on interstate furlough in the receiving state, pursuant to this compact, and fails to abide by the conditions of the furlough as established by the sending state.

Enacted by Chapter 15, 1980 General Session

77-34-3. Reasons for granting furlough pursuant to compact -- Period of furlough -- Escorted furloughs -- Waiver of extradition -- Termination of furlough -- Laws and regulations applicable to inmates.

(1) A furlough pursuant to this compact may be granted to an inmate for the following reasons:

(a) To visit a critically ill relative;

(b) To attend a funeral of a relative;

(c) To obtain medical services of both a physiological and psychiatric nature;

(d) To contact prospective employers;

(e) To secure a suitable residence for use upon discharge or upon parole; if in the latter event, the inmate qualifies for the Interstate Parole and Probation Compact;

(f) For any other reason which, in the opinion of the appropriate official of the sending state, is consistent with the rehabilitation of the inmate.

(2) A furlough among states which are party to the compact shall be granted for a period not to exceed 15 days, including travel time; however, for emergency or other exigent circumstances and at the written request of the furloughee, an extension may be granted by the appropriate official of the sending state upon the consent of the receiving state.

(3) For those inmates ineligible for an unescorted furlough, the sending state, in emergency situations, as defined below, may furlough those inmates under escort to a state which is party to this compact. All inmates on escorted furlough shall be under the guard and jurisdiction of an authorized person from the sending state and shall be under the continuous supervision of that person as consistent with Section 77-34-6.

(a) An emergency situation shall apply only to visit a critically ill relative, to attend a funeral of a relative, or if a medical emergency exists. In all such instances, the sending state shall first verify the legitimacy of the request and if verified shall request the receiving state to approve or reject the proposed furlough.

(b) Escorted furloughs granted for these reasons shall not exceed four days including travel time; however for emergency or other exigent circumstances and at the written request of the inmate, an extension may be granted by the appropriate official of the sending state upon the verification and consent of the appropriate official of the receiving state.

(4) Prior to the authorization for an inmate to go beyond the limits of the state, the appropriate official shall obtain a written waiver of extradition from the inmate waiving his right to be extradited from any state to which he is furloughed or from any state where he was apprehended.

(5) The grant of a stipulated period of furlough may be terminated by either the sending or receiving state upon written showing of cause. In some instances, the furloughed inmate shall be given reasonable opportunity to obtain the information, including written statements of witnesses and other documentation, which may be of assistance to him in subsequent disciplinary hearings by the sending state for those events or violations that caused termination of his furlough. Reasonable costs of gathering of the information shall be chargeable to the furloughee or to the sending state in the event of the furloughed inmate's inability to pay.

(6) Inmates from the sending state, who are on interstate furlough in the receiving state, shall be subject to all the provisions of laws and regulations applicable to those on interstate furlough status within the receiving state, not inconsistent with the sentence imposed.

Enacted by Chapter 15, 1980 General Session

77-34-4. Duties of officials in nonemergency and emergency cases.

(1) In nonemergency situations, the appropriate official of the sending state shall notify the appropriate official of the receiving state in writing 30 days prior to the granting of the furlough, requesting the receiving state to investigate the circumstances of the proposed furlough plan. In these circumstances, the receiving state shall respond in writing within 10 days prior to the proposed furlough either accepting the inmate or stating the reasons for the rejection.

(2) In emergency circumstances, as defined in Subsection 77-34-3(3)(a), the appropriate official of the sending state shall, prior to granting such furlough, (a) verify the legitimacy of the request, and (b) upon verification, immediately notify and secure the consent of the receiving state.

Enacted by Chapter 15, 1980 General Session

77-34-5. Contracts supplemental to compact authorized.

The appropriate official of a party state may supplement but in no way abrogate the provisions of this compact through one or more contracts with any other party state for the furlough of inmates. The contracts may provide for:

(1) Duration;

(2) Terms and conditions of the furlough;

(3) Report of violations and escapes by furloughees;

(4) Costs, if any, to be incurred;

(5) Delivery and retaining of furloughees; and

(6) Other matters as may be necessary and appropriate to fix the jurisdictions, obligations, responsibilities, liabilities, and rights of the sending and receiving states.

Enacted by Chapter 15, 1980 General Session

77-34-6. Jurisdiction and duties of authorized persons of sending and receiving states.

(1) As provided for by the laws, rules, and regulations of the sending state, the furloughee will at all times be subject to the jurisdiction of the appropriate officials and authorized persons of the sending state who shall retain the powers over the furloughee that they would normally exercise over the inmate were he on intrastate furlough.

(2) The authorized person of a sending state may at all times enter a receiving state and there apprehend and retake any person on furlough. For that purpose no formalities will be required other than establishing the authority of that person and the identity of the furloughee to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto as to such persons. The decision of the sending state to retake a person on furlough shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a furloughee there should be pending against him within the receiving state any criminal charge or should he be suspected of having committed within that state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for the offense.

(3) The authorized person of the sending state or the receiving state acting as agent for the sending state will be permitted to transport inmates being retaken through any or all states party to this compact without interference.

(4) The governor of each state may designate an officer who, acting jointly with like officers of other party states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(5) Appropriate officials and authorized persons of the receiving state shall act solely as agents of the sending state with respect to jurisdiction over and liability for the furloughees. The jurisdiction and liability of the sending and receiving states may be subject to further contractual specifications by the sending and receiving states as may be deemed necessary.

(6) The receiving state shall, upon a furlough violation of which it has knowledge, promptly notify the sending state. The notification should specify the nature of the violation and, if a crime has been committed, shall, whenever possible, give the official and furloughee's version of the act. If the grant of furlough is terminated due to the violation, the right and responsibility to retake the furloughee shall be that of the sending state but nothing contained herein shall prevent the receiving state from assisting the sending state toward retaking and returning the furloughee except in instances where the receiving state shall subject the furloughee to confinement for a crime allegedly committed during the furlough within its boundaries. All costs in connection therewith shall be chargeable to the sending state unless costs arise from an escape from confinement in the receiving state.

(7) In the case of an escape to a jurisdiction other than the sending or receiving state, the right and responsibility to retake the escapee shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee, except in instances where the receiving state shall subject the

furloughee to confinement for a crime allegedly committed during furlough within its boundaries.

(8) The receiving state shall make all necessary arrangements to secure overnight lodging in a state, county, or municipal facility for escorted furloughees or, in exceptional circumstances, for unescorted furloughees when they would not have the availability of overnight lodging.

Enacted by Chapter 15, 1980 General Session

77-34-7. Costs and expenses.

(1) Costs arising out of a grant of a furlough for transportation, lodgings, meals, and other related expenses shall be the sole responsibility of the furloughee; however, in the event that the furloughee is financially unable to pay for these expenses, such costs may be assumed by the sending state.

(2) Extraordinary costs, other than those specified in Subsection (1) arising from the grant of furlough among party states shall be the sole responsibility of the sending state. Such costs will generally be confined to emergency medical and special confinement and transportation needs.

Enacted by Chapter 15, 1980 General Session

77-34-8. Effect of execution of compact between states -- Renunciation of compact.

The contracting states solemnly agree:

(1) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state; and

(2) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to furloughees residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending a six-month notice in writing of its intention to withdraw from the compact to the other states party hereto.

Enacted by Chapter 15, 1980 General Session

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" has the same meaning as in Section 78B-7-102.

(2) "Department" means the Department of Public Safety.

(3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.

(4) "Domestic violence" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or

solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

(b) assault, as described in Section 76-5-102;

(c) criminal homicide, as described in Section 76-5-201;

(d) harassment, as described in Section 76-5-106;

(e) electronic communication harassment, as described in Section 76-9-201;

(f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

(g) mayhem, as described in Section 76-5-105;

(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual Exploitation of a Minor;

(i) stalking, as described in Section 76-5-106.5;

(j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;

(k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;

(l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;

(o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with any of the domestic violence offenses otherwise described in this Subsection (4). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.; or

(p) child abuse as described in Section 76-5-109.1.

(5) "Jail release agreement" means a written agreement:

(a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release from jail as required in Subsection 77-36-2.5 (2).

(6) "Jail release court order" means a written court order:

(a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release from jail as required in Subsection 77-36-2.5(2).

(7) "Marital status" means married and living together, divorced, separated, or not married.

(8) "Married and living together" means a man and a woman whose marriage

was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

(9) "Not married" means any living arrangement other than married and living together, divorced, or separated.

(10) "Pretrial protective order" means a written order:

(a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release pursuant to Subsection 77-36-2.5(3)(c), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

(11) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact a person who has been convicted of a domestic violence offense may have with a victim or other specified individuals pursuant to Sections 77-36-5 and 77-36-5.1.

(12) "Separated" means a man and a woman who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

(13) "Victim" means a cohabitant who has been subjected to domestic violence.

Amended by Chapter 39, 2012 General Session

77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence offenses.

(1) For purposes of this section, "qualifying domestic violence offense" means:

(a) a domestic violence offense in Utah; or

(b) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.

(2) A person who is convicted of a domestic violence offense is:

(a) guilty of a class B misdemeanor if:

(i) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and

(ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or

(B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;

(b) guilty of a class A misdemeanor if:

(i) the domestic violence offense described in this Subsection (2) is designated by law as a class B misdemeanor; and

(ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or

(B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic

violence offense; or

(c) guilty of a felony of the third degree if:

(i) the domestic violence offense described in this Subsection (2) is designated by law as a class A misdemeanor; and

(ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or

(B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense.

(3) For purposes of this section, a plea of guilty or no contest to any qualifying domestic violence offense in Utah which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Amended by Chapter 55, 2005 General Session

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection while the victim removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with

Subsection 77-36-2.5(8).

Amended by Chapter 113, 2011 General Session

77-36-2.2. Powers and duties of law enforcement officers to arrest -- Reports of domestic violence cases -- Reports of parties' marital status.

(1) The primary duty of law enforcement officers responding to a domestic violence call is to protect the victim and enforce the law.

(2) (a) In addition to the arrest powers described in Section 77-7-2, when a peace officer responds to a domestic violence call and has probable cause to believe that an act of domestic violence has been committed, the peace officer shall arrest without a warrant or shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence.

(b) (i) If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section.

(ii) For purposes of Subsection (2)(b)(i), "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.

(c) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, the officer shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence, in accordance with the requirements of Section 77-36-2.1.

(3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the predominant aggressor was. If the officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining who the predominant aggressor was, the officer shall consider:

(a) any prior complaints of domestic violence;

(b) the relative severity of injuries inflicted on each person;

(c) the likelihood of future injury to each of the parties; and

(d) whether one of the parties acted in self defense.

(4) A law enforcement officer may not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage any party's request for intervention by law enforcement.

(5) (a) A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more parties, shall submit a detailed, written report specifying the grounds for not arresting any party or for arresting both parties.

(b) A law enforcement officer who does not make an arrest shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence.

(6) (a) A law enforcement officer responding to a complaint of domestic violence shall prepare an incident report that includes the officer's disposition of the case.

(b) From January 1, 2009 until December 31, 2013, any law enforcement officer employed by a city of the first or second class responding to a complaint of domestic violence shall also report, either as a part of an incident report or on a separate form, the following information:

(i) marital status of each of the parties involved;

(ii) social, familial, or legal relationship of the suspect to the victim; and

(iii) whether or not an arrest was made.

(c) The information obtained in Subsection (6)(b):

(i) shall be reported monthly to the department;

(ii) shall be reported as numerical data that contains no personal identifiers; and

(iii) is a public record as defined in Section 63G-2-103.

(d) The incident report shall be made available to the victim, upon request, at no cost.

(e) The law enforcement agency shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred.

(7) The department shall compile the information described in Subsections (6)(b) and (c) into a report and present that report to the Law Enforcement and Criminal Justice Interim Committee during the 2013 interim, no later than May 31, 2013.

(8) Each law enforcement agency shall, as soon as practicable, make a written record and maintain records of all incidents of domestic violence reported to it, and shall be identified by a law enforcement agency code for domestic violence.

Amended by Chapter 143, 2013 General Session

77-36-2.3. Law enforcement officer's training.

All training of law enforcement officers relating to domestic violence shall stress protection of the victim, enforcement of criminal laws in domestic situations, and the availability of community shelters, services, and resources. Law enforcement agencies and community organizations with expertise in domestic violence shall cooperate in all aspects of that training.

Enacted by Chapter 300, 1995 General Session

77-36-2.4. Violation of protective orders -- Mandatory arrest -- Penalties.

(1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order or protective order.

(2) (a) Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section 77-36-1.

(b) Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with Section 77-36-1.1.

(3) As used in this section, "ex parte protective order" or "protective order" includes:

(a) any protective order or ex parte protective order issued under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(b) any jail release agreement, jail release court order, pretrial protective order, or sentencing protective order issued under Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

(c) any child protective order or ex parte child protective order issued under Title 78B, Chapter 7, Part 2, Child Protective Orders; or

(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Amended by Chapter 384, 2010 General Session

77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release agreements -- Jail release court orders.

(1) (a) Upon arrest for domestic violence, and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim of domestic violence.

(b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

(2) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release the person is ordered by the court or agrees in writing that until further order of the court, the person will:

(a) have no personal contact with the alleged victim;

(b) not threaten or harass the alleged victim; and

(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(3) (a) The jail release agreement or jail release court order expires at midnight on the day on which the person arrested appears in person or by video for arraignment or an initial appearance.

(b) (i) If criminal charges have not been filed against the arrested person, the court may, for good cause and in writing, extend the jail release agreement or jail release court order beyond the time period under Subsection (3)(a) as provided in Subsection (3)(b)(ii).

(ii) (A) The court may extend a jail release agreement or jail release court order under Subsection (3)(b)(i) to no longer than midnight of the third business day after the arrested person's first court appearance.

(B) If criminal charges are filed against the arrested person within the three business days under Subsection (3)(b)(ii)(A), the jail release agreement or the jail release court order continues in effect until the arrested person appears in person or by video at the arrested person's next scheduled court appearance.

(c) If criminal charges have been filed against the arrested person the court may, upon the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial protective order.

(4) As a condition of release, the court may order the defendant to participate in an electronic or other monitoring program and to pay the costs associated with the program.

(5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the release conditions described in Subsection (2)(a) or (c). Upon waiver, those release conditions do not apply to the alleged perpetrator.

(b) A court or magistrate may modify the release conditions described in Subsection (2)(a) or (c), in writing or on the record, and only for good cause shown.

(6) (a) When a person is released pursuant to Subsection (2), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make a reasonable effort to notify the victim of that release.

(b) (i) When a person is released pursuant to Subsection (2) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When a person is released pursuant to Subsection (2) or (3) based upon a jail release court order or if a jail release agreement is modified pursuant to Subsection (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

(iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.

(c) This Subsection (6) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

(7) (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release court order or jail release agreement executed pursuant to Subsection (2) the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (2) is guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree felony; or

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(c) City attorneys may prosecute class A misdemeanor violations under this section.

(8) An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(9) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged victim with written notice containing:

(a) the release conditions described in Subsection (2), and notice that those release conditions shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

(b) notification of the penalties for violation of any jail release court order or any jail release agreement executed under Subsection (2);

(c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;

(d) the address of the appropriate court in the district or county in which the

alleged victim resides;

(e) the availability and effect of any waiver of the release conditions; and

(f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

(10) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged perpetrator with written notice containing:

(a) notification that the alleged perpetrator may not contact the alleged victim before being released;

(b) the release conditions described in Subsection (2) and notice that those release conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to release;

(c) notification of the penalties for violation of any jail release court order or any written jail release agreement executed under Subsection (2); and

(d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.

(11) (a) If the alleged perpetrator fails to personally appear in court as scheduled, the jail release court order or jail release agreement does not expire and continues in effect until the alleged perpetrator makes the personal appearance in court as required by Section 77-36-2.6.

(b) If, when the alleged perpetrator personally appears in court as required by Section 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow the jail release court order or jail release agreement to expire at midnight on the day of the court appearance or may extend it for good cause.

(12) In addition to the provisions of Subsections (2) through (8), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

Amended by Chapter 245, 2013 General Session
Amended by Chapter 278, 2013 General Session

77-36-2.6. Appearance of defendant required -- Determinations by court -- Pretrial protective order.

(1) A defendant who has been arrested for an offense involving domestic violence shall appear in person or by video before the court or a magistrate within one judicial day after the arrest.

(2) A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.

(3) At the time of an appearance under Subsection (1) or (2), the court shall determine the necessity of imposing a pretrial protective order or other condition of pretrial release including, but not limited to, participating in an electronic or other type of monitoring program, and shall state its findings and determination in writing.

(4) Appearances required by this section are mandatory and may not be waived.

Amended by Chapter 384, 2010 General Session

77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial protective order pending trial.

(1) Because of the serious nature of domestic violence, the court, in domestic violence actions:

(a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;

(b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;

(c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney and order the defendant's attorney not to disclose the victim's location to the client;

(d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence;

(e) may dismiss a charge on stipulation of the prosecutor and the victim; and

(f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of that status.

(2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the case against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully completes all conditions imposed by the court. If the defendant fails to complete any condition imposed by the court under Subsection (1)(f), the court may accept the defendant's plea.

(3) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant is charged with a crime involving domestic violence, the court may, during any court hearing where the defendant is present, issue a pretrial protective order, pending trial:

(i) enjoining the defendant from threatening to commit or committing acts of domestic violence or abuse against the victim and any designated family or household member;

(ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(iii) removing and excluding the defendant from the victim's residence and the premises of the residence;

(iv) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim and any designated family member; and

(v) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member.

(b) Violation of an order issued pursuant to this section is punishable as follows:

(i) if the original arrest or subsequent charge filed is a felony, an offense under this section is a third degree felony; and

(ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this section is a class A misdemeanor.

(c) (i) The court shall provide the victim with a certified copy of any pretrial protective order that has been issued if the victim can be located with reasonable effort.

(ii) The court shall also transmit the pretrial protective order to the statewide domestic violence network.

(d) Issuance of a pretrial or sentencing protective order supercedes a written jail release agreement or a written jail release court order issued by the court at the time of arrest.

(4) (a) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of the statewide domestic violence network described in Section 78B-7-113.

(b) The court shall transmit the dismissal to the statewide domestic violence network.

(c) Any pretrial protective orders, including jail release court orders and jail release agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.

(5) When the privilege of confidential communication between spouses, or the testimonial privilege of spouses is invoked in any criminal proceeding in which a spouse is the victim of an alleged domestic violence offense, the victim shall be considered to be an unavailable witness under the Utah Rules of Evidence.

(6) The court may not approve diversion for a perpetrator of domestic violence.

Amended by Chapter 384, 2010 General Session

77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against defendant -- Sentencing protective order.

(1) (a) When a defendant is found guilty of a crime involving domestic violence and a condition of the sentence restricts the defendant's contact with the victim, a sentencing protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's probation.

(b) (i) The sentencing protective order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(ii) The court shall transmit the sentencing protective order to the statewide domestic violence network.

(c) Violation of a sentencing protective order issued pursuant to this Subsection (1) is a class A misdemeanor.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic or other type of monitoring program.

(3) The court may also require the defendant to pay all or part of the costs of

counseling incurred by the victim and any children affected by or exposed to the domestic violence offense, as well as the costs for the defendant's own counseling.

(4) The court shall:

(a) assess against the defendant, as restitution, any costs for services or treatment provided to the victim and affected children of the victim or the defendant by the Division of Child and Family Services under Section 62A-4a-106; and

(b) order those costs to be paid directly to the division or its contracted provider.

(5) The court shall order the defendant to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is licensed by the Department of Human Services, unless the court finds that there is no licensed program reasonably available or that the treatment or therapy is not necessary.

Amended by Chapter 384, 2010 General Session

77-36-5.1. Conditions of probation for person convicted of domestic violence offense.

(1) Before any perpetrator who has been convicted of a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court, which may include a sentencing protective order:

(a) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(c) requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;

(d) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;

(e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;

(f) directing the perpetrator to surrender any weapons the perpetrator owns or possesses;

(g) directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;

(h) directing the perpetrator to pay restitution to the victim; and

(i) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3) The perpetrator is responsible for the costs of any condition of probation, according to the perpetrator's ability to pay.

(4) (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any offense involving domestic violence committed by

the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any violation of any sentencing criminal protective order issued by the court.

(b) Notification of the victim under Subsection (4)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the notification to the last-known address of the victim.

(5) The court shall transmit all dismissals, terminations, and expirations of pretrial and sentencing criminal protective orders issued by the court to the statewide domestic violence network.

Amended by Chapter 384, 2010 General Session

77-36-6. Enforcement of orders.

(1) Each law enforcement agency in this state shall enforce all orders of the court issued pursuant to the requirements and procedures described in this chapter, and shall enforce:

(a) all protective orders and ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(b) jail release agreements, jail release court orders, pretrial protective orders, and sentencing protective orders; and

(c) all foreign protection orders enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

Amended by Chapter 384, 2010 General Session

77-36-7. Prosecutor to notify victim of decision as to prosecution.

(1) The prosecutor who is responsible for making the decision of whether to prosecute a case shall advise the victim, if the victim has requested notification, of the status of the victim's case and shall notify the victim of a decision within five days after the decision has been made.

(2) Notification to the victim that charges will not be filed against an alleged perpetrator shall include a description of the procedures available to the victim in that jurisdiction for initiation of criminal and other protective proceedings.

Amended by Chapter 244, 1996 General Session

77-36-8. Peace officers' immunity from liability.

A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making or failing to make an arrest or for issuing or failing to issue a citation in accordance with this chapter, for enforcing in good faith an order of the court, or for acting or omitting to act in any other way in good faith under this chapter, in situations arising from an alleged incident of domestic violence.

Amended by Chapter 300, 1995 General Session

77-36-9. Separability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Enacted by Chapter 114, 1983 General Session

77-36-10. Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys.

Enacted by Chapter 244, 1996 General Session

77-37-1. Legislative intent.

(1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

Enacted by Chapter 194, 1987 General Session

77-37-2. Definitions.

In this chapter:

(1) "Child" means a person who is younger than 18 years of age, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.

(2) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.

(3) "Victim" means a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.

(4) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

Enacted by Chapter 194, 1987 General Session

77-37-3. Bill of rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5, 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24a-1 through 77-24a-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have the following rights:

(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the alleged sexual

offender for HIV infection as provided in Section 76-5-502;

(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;

(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.

(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:

(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.

(b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.

(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

(4) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to

the criminal justice agencies involved in the case.

Amended by Chapter 232, 2014 General Session

77-37-4. Additional rights -- Children.

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

(5) (a) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order.

(b) A court order described in Subsection (5)(a):

(i) shall describe with particularity to whom the recording or transcript of the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and

(ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim.

(c) A parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause. The order shall designate the agency that is required to display the recording or transcript to the parent or guardian and shall prohibit viewing by anyone not named in the order.

(d) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved.

(6) (a) The following offices and their designated employees may distribute and receive a recording or transcript to and from one another without a court order:

(i) the Division of Child and Family Services;

(ii) administrative law judges employed by the Department of Human Services;

(iii) Department of Human Services investigators investigating the Division of

Child and Family Services or investigators authorized to investigate under Section 62A-4a-202.6;

(iv) an office of the city attorney, county attorney, district attorney, or attorney general;

(v) a law enforcement agency;

(vi) a Children's Justice Center established under Section 67-5b-102; or

(vii) the attorney for the child who is the subject of the interview.

(b) In a criminal case or in a juvenile court in which the state is a party:

(i) the parties may display and enter into evidence a recording or transcript in the course of a prosecution;

(ii) the state's attorney may distribute a recording or transcript to the attorney for the defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for discovery;

(iii) the attorney for the defendant or respondent may do one or both of the following:

(A) release the recording or transcript to an expert retained by the attorney for the defendant or respondent if the expert agrees in writing that the expert will not distribute, release, or display the recording or transcript to anyone without prior authorization from the court; or

(B) permit the defendant or respondent to view the recording or transcript, but may not distribute or release the recording or transcript to the defendant or respondent; and

(iv) the court shall advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be distributed, released, or displayed without prior authorization from the court.

(c) A court's failure to advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be used as a defense to prosecution for a violation of the disclosure rule.

(d) In an administrative case, pursuant to a written request, the Division of Child and Family Services may display, but may not distribute or release, a recording or transcript to the respondent or to the respondent's designated representative.

(e) (i) Within two business days of a request from a parent or guardian of a child victim, an investigative agency shall allow the parent or guardian to view a recording after the conclusion of an interview, unless:

(A) the suspect is a parent or guardian of the child victim;

(B) the suspect resides in the home with the child victim; or

(C) the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation.

(ii) If the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation, the parent or guardian may petition a juvenile or district court for an expedited hearing on whether there is good cause for the court to enter an order allowing the parent or guardian to view the recording in accordance with Subsection (5)(c).

(iii) A Children's Justice Center shall coordinate the viewing of the recording described in this Subsection (6)(e).

(f) A multidisciplinary team assembled by a Children's Justice Center or an

interdisciplinary team assembled by the Division of Child and Family Services may view a recording or transcript, but may not receive a recording or transcript.

(g) A Children's Justice Center:

(i) may distribute or display a recording or transcript to an authorized trainer or evaluator for purposes of training or evaluation; and

(ii) may display, but may not distribute, a recording or transcript to an authorized trainee.

(h) An authorized trainer or instructor may display a recording or transcript according to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center or according to the authorized trainer's or instructor's scope of employment.

(i) (i) In an investigation under Section 53A-6-306, in which a child victim who is the subject of the recording or transcript has alleged criminal conduct against an educator, a law enforcement agency may distribute or release the recording or transcript to an investigator operating under UPPAC authorization, upon the investigator's written request.

(ii) If the respondent in a case investigated under Section 53A-6-306 requests a hearing authorized under that section, the investigator operating under UPPAC authorization may display, release, or distribute the recording or transcript to the prosecutor operating under UPPAC authorization or to an expert retained by an investigator.

(iii) Upon request for a hearing under Section 53A-6-306, a prosecutor operating under UPPAC authorization may display the recording or transcript to a pro se respondent, to an attorney retained by the respondent, or to an expert retained by the respondent.

(iv) The parties to a hearing authorized under Section 53A-6-306 may display and enter into evidence a recording or transcript in the course of a prosecution.

(7) Except as otherwise provided in this section, it is a class B misdemeanor for any individual to distribute, release, or display any recording or transcript of an interview of a child victim conducted at a Children's Justice Center.

Amended by Chapter 90, 2014 General Session

77-37-5. Remedies -- District Victims' Rights Committee.

(1) In each judicial district, the Utah Council on Victims of Crime, established in Section 63M-7-601, shall appoint a person who shall chair a judicial district victims' rights committee consisting of:

(a) a county attorney or district attorney;

(b) a sheriff;

(c) a corrections field services administrator;

(d) an appointed victim advocate;

(e) a municipal attorney;

(f) a municipal chief of police; and

(g) other representatives as appropriate.

(2) The committee shall meet at least semiannually to review progress and problems related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title

77, Chapter 38a, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and other interested parties may submit matters of concern to the victims' rights committee. The committee may hold a hearing open to the public on any appropriate matter of concern and may publish its findings. These matters shall also be considered at the meetings of the victims' rights committee. The committee shall forward minutes of all meetings to the Utah Council on Victims of Crime for review and other appropriate action.

(3) If a victims' rights committee is unable to resolve a complaint, it may refer the complaint to the Utah Council on Victims of Crime.

(4) The Utah Office for Victims of Crime shall provide materials to local law enforcement to inform every victim of a sexual offense of the right to request testing of the convicted sexual offender and of the victim as provided in Section 76-5-502.

(5) (a) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual.

(b) For all other violations, if the committee finds a violation of a victim's right, it shall refer the matter to the appropriate court for further proceedings consistent with Subsection 77-38-11(2).

(c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act, does not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

(6) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

Amended by Chapter 131, 2011 General Session

77-38-1. Title.

This act shall be known and may be cited as the "Rights of Crime Victims Act."

Enacted by Chapter 198, 1994 General Session

77-38-2. Definitions.

For the purposes of this chapter and the Utah Constitution:

(1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or disparage.

(2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

(3) "Fairness" means treating the crime victim reasonably, even-handedly, and impartially.

(4) "Harassment" means treating the crime victim in a persistently annoying manner.

(5) "Important criminal justice hearings" or "important juvenile justice hearings"

means the following proceedings in felony criminal cases or cases involving a minor's conduct which would be a felony if committed by an adult:

(a) any preliminary hearing to determine probable cause;

(b) any court arraignment where practical;

(c) any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceeding to take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;

(d) any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;

(e) any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or at a sidebar conference;

(f) any court proceeding to determine the disposition of a minor or sentence, fine, or restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant; and

(g) any public hearing concerning whether to grant a defendant or minor parole or other form of discretionary release from confinement.

(6) "Reliable information" means information worthy of confidence, including any information whose use at sentencing is permitted by the United States Constitution.

(7) "Representative of a victim" means a person who is designated by the victim or designated by the court and who represents the victim in the best interests of the victim.

(8) "Respect" means treating the crime victim with regard and value.

(9) (a) "Victim of a crime" means any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

(b) For purposes of the right to be present, "victim of a crime" does not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment.

(c) For purposes of the right to be present and heard at a public hearing as provided in Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a), "victim of a crime" includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

Amended by Chapter 103, 1997 General Session

77-38-3. Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information -- Pretrial

criminal no contact order.

(1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

(2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f), which the victim has requested.

(4) (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.

(5) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.

(b) The court shall also consider whether any notification system it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.

(6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.

(7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

(b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

(9) (a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.

(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice it has received

from a victim to the Board of Pardons and Parole.

(10) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.

(11) (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63G-2-305(10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

(i) a law enforcement agency, including the prosecuting agency;

(ii) a victims' right committee as provided in Section 77-37-5;

(iii) a governmentally sponsored victim or witness program;

(iv) the Department of Corrections;

(v) the Utah Office for Victims of Crime;

(vi) the Commission on Criminal and Juvenile Justice; and

(vii) the Board of Pardons and Parole.

(12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

(13) (a) When a defendant is charged with a felony crime under Sections 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:

(i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;

(ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and

(iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.

(b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.

(c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.

(ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

Amended by Chapter 196, 2013 General Session
Amended by Chapter 445, 2013 General Session

77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal -- Control of disruptive acts or irrelevant statements -- Statements from persons in custody.

(1) The victim of a crime, the representative of the victim, or both shall have the right:

(a) to be present at the important criminal or juvenile justice hearings provided in Subsection 77-38-2(5);

(b) to be heard at the important criminal or juvenile justice hearings provided in Subsections 77-38-2(5)(b), (c), (d), (f), and (g);

(c) to submit a written statement in any action on appeal related to that crime; and

(d) upon request to the judge hearing the matter, to be present and heard at the initial appearance of the person suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.

(2) This chapter shall not confer any right to the victim of a crime to be heard:

(a) at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness; and

(b) at any delinquency trial or at any preliminary hearing in a minor's case, unless called as a witness.

(3) The right of a victim or representative of a victim to be present at trial is subject to Rule 615 of the Utah Rules of Evidence.

(4) Nothing in this chapter shall deprive the court of the right to prevent or punish disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

(5) The court shall have the right to limit any victim's statement to matters that are relevant to the proceeding.

(6) In all cases where the number of victims exceeds five, the court may limit the in-court oral statements it receives from victims in its discretion to a few representative statements.

(7) Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report.

(8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment, the right to be heard under this chapter shall be exercised by submitting a written statement to the court.

(9) The court may exclude any oral statement from a victim on the grounds of the victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

(10) Except in juvenile court cases, the Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

Amended by Chapter 28, 2011 General Session

77-38-5. Application to felonies and misdemeanors of the declaration of the rights of crime victims.

The provisions of this chapter shall apply to:

(1) any felony filed in the courts of the state;

(2) to any class A and class B misdemeanor filed in the courts of the state; and

(3) to cases in the juvenile court as provided in Section 78A-6-114.

Amended by Chapter 3, 2008 General Session

77-38-6. Victim's right to privacy.

(1) The victim of a crime has the right, at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that a compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.

(2) A defendant may not compel any witness to a crime, at any court proceeding, including any juvenile court proceeding, to testify regarding the witness's address, telephone number, place of employment, or other locating information unless the witness specifically consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on whether to order disclosure shall be in camera.

Amended by Chapter 352, 1995 General Session

77-38-7. Victim's right to a speedy trial.

(1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial.

(2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusion of all collateral attacks on dispositions or criminal judgments.

(3) (a) In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case.

(b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

Amended by Chapter 352, 1995 General Session

77-38-8. Age-appropriate language at judicial proceedings -- Advisor.

(1) In any criminal proceeding or juvenile court proceeding regarding or involving a child, examination and cross-examination of a victim or witness 13 years of age or younger shall be conducted in age-appropriate language.

(2) (a) The court may appoint an advisor to assist a witness 13 years of age or younger in understanding questions asked by counsel.

(b) The advisor is not required to be an attorney.

Amended by Chapter 352, 1995 General Session

77-38-9. Representative of victim -- Court designation -- Representation in cases involving minors -- Photographs in homicide cases.

(1) (a) A victim of a crime may designate, with the approval of the court, a representative who may exercise the same rights that the victim is entitled to exercise under this chapter, including pursuing restitution.

(b) Except as otherwise provided in this section, the victim may revoke the designation at any time.

(c) In cases where the designation is in question, the court may require that the designation of the representative be made in writing by the victim.

(2) In cases in which the victim is deceased or incapacitated, upon request from the victim's spouse, parent, child, or close friend, the court shall designate a representative or representatives of the victim to exercise the rights of a victim under this chapter on behalf of the victim. The responsible prosecuting agency may request a designation to the court.

(3) (a) If the victim is a minor, the court in its discretion may allow the minor to exercise the rights of a victim under this chapter or may allow the victim's parent or other immediate family member to act as a representative of the victim.

(b) The court may also, in its discretion, designate a person who is not a member of the immediate family to represent the interests of the minor.

(4) The representative of a victim of a crime shall not be:

(a) the accused or a person who appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct, a related crime or conduct, or a crime or act arising from the same conduct, criminal episode, or plan as the crime or conduct is defined under the laws of this state;

(b) a person in the custody of or under detention of federal, state, or local authorities; or

(c) a person whom the court in its discretion considers to be otherwise inappropriate.

(5) Any notices that are to be provided to a victim pursuant to this chapter shall be sent to the victim or the victim's lawful representative.

(6) On behalf of the victim, the prosecutor may assert any right to which the victim is entitled under this chapter, unless the victim requests otherwise or exercises his own rights.

(7) In any homicide prosecution, the prosecution may introduce a photograph of the victim taken before the homicide to establish that the victim was a human being, the identity of the victim, and for other relevant purposes.

Amended by Chapter 244, 2014 General Session

77-38-10. Victim's discretion.

(1) (a) The victim may exercise any rights under this chapter at his discretion to be present and to be heard at a court proceeding, including a juvenile delinquency proceeding.

(b) The absence of the victim at the court proceeding does not preclude the court from conducting the proceeding.

(2) A victim shall not refuse to comply with an otherwise lawful subpoena under this chapter.

(3) A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under this chapter.

Amended by Chapter 352, 1995 General Session

77-38-11. Enforcement -- Appellate review -- No right to money damages.

(1) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief, including prospective injunctive relief, may be brought against the individual and the governmental entity that employs the individual.

(2) (a) The victim of a crime or representative of a victim of a crime, including any Victims' Rights Committee as defined in Section 77-37-5 may:

(i) bring an action for declaratory relief or for a writ of mandamus defining or enforcing the rights of victims and the obligations of government entities under this chapter;

(ii) petition to file an amicus brief in any court in any case affecting crime victims; and

(iii) after giving notice to the prosecution and the defense, seek an appropriate remedy for a violation of a victim's right from the judge assigned to the case involving the issue as provided in Section 77-38-11.

(b) Adverse rulings on these actions or on a motion or request brought by a victim of a crime or a representative of a victim of a crime may be appealed under the rules governing appellate actions, provided that an appeal may not constitute grounds for delaying any criminal or juvenile proceeding.

(c) An appellate court shall review all properly presented issues, including issues that are capable of repetition but would otherwise evade review.

(3) (a) Upon a showing that the victim has not unduly delayed in seeking to protect the victim's right, and after hearing from the prosecution and the defense, the judge shall determine whether a right of the victim has been violated.

(b) If the judge determines that a victim's right has been violated, the judge shall proceed to determine the appropriate remedy for the violation of the victim's right by hearing from the victim and the parties, considering all factors relevant to the issue, and then awarding an appropriate remedy to the victim. The court shall reconsider any judicial decision or judgment affected by a violation of the victim's right and determine whether, upon affording the victim the right and further hearing from the prosecution and the defense, the decision or judgment would have been different. If the court's

decision or judgment would have been different, the court shall enter the new different decision or judgment as the appropriate remedy. If necessary to protect the victim's right, the new decision or judgment shall be entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall the appropriate remedy be a new trial, damages, attorney fees, or costs.

(c) The appropriate remedy shall include only actions necessary to provide the victim the right to which the victim was entitled and may include reopening previously held proceedings. Subject to Subsection (3)(d), the court may reopen a sentence or a previously entered guilty or no contest plea only if doing so would not preclude continued prosecution or sentencing the defendant and would not otherwise permit the defendant to escape justice. Any remedy shall be tailored to provide the victim an appropriate remedy without violating any constitutional right of the defendant.

(d) If the court sets aside a previously entered plea of guilty or no contest, and thereafter continued prosecution of the charge is held to be prevented by the defendant's having been previously put in jeopardy, the order setting aside the plea is void and the plea is reinstated as of the date of its original entry.

(e) The court may not award as a remedy the dismissal of any criminal charge.

(f) The court may not award any remedy if the proceeding that the victim is challenging occurred more than 90 days before the victim filed an action alleging the violation of the right.

(4) The failure to provide the rights in this chapter or Title 77, Chapter 37, Victims' Rights, shall not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

Amended by Chapter 331, 2010 General Session

77-38-12. Construction of this chapter -- No right to set aside conviction, adjudication, admission, or plea -- Severability clause.

(1) All of the provisions contained in this chapter shall be construed to assist the victims of crime.

(2) This chapter may not be construed as creating a basis for dismissing any criminal charge or delinquency petition, vacating any adjudication or conviction, admission or plea of guilty or no contest, or for a defendant to obtain appellate, habeas corpus, or other relief from a judgment in any criminal or delinquency case.

(3) This chapter may not be construed as creating any right of a victim to appointed counsel at state expense.

(4) All of the rights contained in this chapter shall be construed to conform to the Constitution of the United States.

(5) (a) In the event that any portion of this chapter is found to violate the Constitution of the United States, the remaining provisions of this chapter shall continue to operate in full force and effect.

(b) In the event that a particular application of any portion of this chapter is found to violate the Constitution of the United States, all other applications shall continue to operate in full force and effect.

(6) The enumeration of certain rights for crime victims in this chapter shall not be construed to deny or disparage other rights granted by the Utah Constitution or the Legislature or retained by victims of crimes.

Amended by Chapter 120, 2009 General Session

77-38-13. Declaration of legislative authority.

It is the view of the Legislature that the provisions of this chapter, and other provisions enacted simultaneously with it, are substantive provisions within inherent legislative authority. In the event that any of the provisions of this chapter, and other provisions enacted simultaneously with it, are interpreted to be procedural in nature, the Legislature also intends to invoke its powers to modify procedural rules under the Utah Constitution.

Enacted by Chapter 198, 1994 General Session

77-38-14. Notice of expungement petition -- Victim's right to object.

(1) The Department of Corrections or the Juvenile Probation Department shall prepare a document explaining the right of a victim or a victim's representative to object to a petition for expungement under Section 77-40-107 or 78A-6-1105 and the procedures for obtaining notice of any such petition. The department or division shall also provide each trial court a copy of the document which has jurisdiction over delinquencies or criminal offenses subject to expungement.

(2) The prosecuting attorney in any case leading to a conviction or an adjudication subject to expungement shall provide a copy of the document to each person who would be entitled to notice of a petition for expungement under Sections 77-40-107 and 78A-6-1105.

Amended by Chapter 283, 2010 General Session

77-38-15. Civil action against human traffickers and human smugglers.

(1) A victim of a person that commits the offense of human trafficking or human smuggling under Section 76-5-308, or aggravated human trafficking or aggravated human smuggling under Section 76-5-310, may bring a civil action against that person.

(2) (a) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.

(b) The court may award treble damages on proof of actual damages if the court finds that the person's acts were willful and malicious.

(3) In an action under this section, the court shall award a prevailing victim reasonable attorney fees and costs.

(4) An action under this section shall be commenced no later than 10 years after the later of:

(a) the day on which the victim was freed from the human trafficking or human smuggling situation;

(b) the day on which the victim attains 18 years of age; or

(c) if the victim was unable to bring an action due to a disability, the day on

which the victim's disability ends.

(5) The time period described in Subsection (4) is tolled during a period of time when the victim fails to bring an action due to the person:

(a) inducing the victim to delay filing the action;

(b) preventing the victim from filing the action; or

(c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.

(6) The court shall offset damages awarded to the victim under this section by any restitution paid to the victim under Title 77, Chapter 38a, Crime Victims Restitution Act.

(7) A victim may bring an action described in this section in any court of competent jurisdiction where:

(a) a violation described in Subsection (1) occurred;

(b) the victim resides; or

(c) the person that commits the offense resides or has a place of business.

(8) If the victim is deceased or otherwise unable to represent the victim's own interests in court, a legal guardian, family member, representative of the victim, or court appointee may bring an action under this section on behalf of the victim.

(9) This section does not preclude any other remedy available to the victim under the laws of this state or under federal law.

Enacted by Chapter 140, 2014 General Session

77-38-201. Title.

This part is known and cited as the "Confidential Communications for Sexual Assault Act."

Renumbered and Amended by Chapter 3, 2008 General Session

77-38-202. Purpose.

It is the purpose of this act to enhance and promote the mental, physical and emotional recovery of victims of sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed.

Renumbered and Amended by Chapter 3, 2008 General Session

77-38-203. Definitions.

As used in this part:

(1) "Confidential communication" means information given to a sexual assault counselor by a victim and includes reports or working papers made in the course of the counseling relationship.

(2) "Rape crisis center" means any office, institution, or center assisting victims of sexual assault and their families which offers crisis intervention, medical, and legal services, and counseling.

(3) "Sexual assault counselor" means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in

counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.

(4) "Victim" means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

Renumbered and Amended by Chapter 3, 2008 General Session

77-38-204. Disclosure of confidential communications.

The confidential communication between a victim and a sexual assault counselor is available to a third person only when:

(1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;

(2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;

(3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or

(4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

Renumbered and Amended by Chapter 3, 2008 General Session

77-38-301. Title.

This part is known as the "Profits from Notorious Criminal Activity Act."

Amended by Chapter 260, 2012 General Session

77-38-302. Definitions.

As used in this part:

(1) "Convicted person" means a person who has been convicted of a crime.

(2) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental illness regardless of whether the sentence was imposed or suspended.

(3) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

(4) "Memorabilia" means any tangible property of a convicted person or a representative or assignee of a convicted person, the value of which is enhanced by the notoriety gained from the criminal activity for which the person was convicted.

(5) "Notoriety of crimes contract" means a contract or other agreement with a convicted person, or a representative or assignee of a convicted person, with respect to:

(a) the reenactment of a crime in any manner including a movie, book, magazine article, Internet website, recording, phonograph record, radio or television

presentation, or live entertainment of any kind;

(b) the expression of the convicted person's thoughts, feelings, opinions, or emotions regarding a crime involving or causing personal injury, death, or property loss as a direct result of the crime; or

(c) the payment or exchange of any money or other consideration or the proceeds or profits that directly or indirectly result from the notoriety of the crime.

(6) "Office" means the Utah Office for Victims of Crime.

(7) "Profit" means any income or benefit:

(a) over and above the fair market value of tangible property that is received upon the sale or transfer of memorabilia; or

(b) any money, negotiable instruments, securities, or other consideration received or contracted for gain which is traceable to a notoriety of crimes contract.

Amended by Chapter 278, 2013 General Session

77-38-303. Profit from sale of memorabilia or notoriety of crimes contract -- Deposit in Crime Victim Reparations Fund -- Penalty.

(1) Any convicted person or a representative or assignee of a convicted person who receives a profit from the sale or transfer of memorabilia shall remit to the fund:

(a) a complete, itemized accounting of the transaction, including:

(i) a description of each item sold;

(ii) the amount received for each item;

(iii) the estimated fair market value of each item; and

(iv) the name and address of the purchaser of each item; and

(b) a check or money order for the amount of the profit, which shall be the difference between the amount received for the item and the estimated fair market value of the item.

(2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of up to $1,000 per item sold or transferred or three times the amount of the unremitted profit, whichever is greater.

(3) (a) Any person or entity who enters into a notoriety of crime contract with a convicted person or with a representative or assignee of a convicted person shall pay to the fund any profit which by the terms of the contract would otherwise be owing to the convicted person or representative or assignee of the convicted person.

(b) A convicted person or a representative or assignee of a convicted person who has received any profit from a notoriety of crime contract shall remit the profit to the fund. Any future profit which, by the terms of the contract, would otherwise be owing to the convicted person or a representative or assignee of a convicted person shall be paid to the fund as required under Subsection (3)(a).

(4) Upon receipt of money under Subsection (3), the office shall distribute the amounts to the victim of the crime from which the profits are derived if any restitution remains outstanding. If no restitution is outstanding, the money shall be deposited into the fund.

(5) (a) Any person or entity who willfully violates Subsection (3) may be assessed a civil penalty of up to $1,000,000.00, or up to three times the total value of the original notoriety of crime contract, whichever is greater.

(b) Any civil penalty ordered under this Subsection shall be paid to the fund.

(6) The prosecuting agency or the attorney general may bring an action to enforce the provisions of this chapter in the court of conviction.

(7) A court shall enter an order to remit funds as provided in this chapter if it finds by a preponderance of the evidence any violation of Subsection (1) or (3).

Amended by Chapter 278, 2013 General Session

77-38a-101. Title.

This chapter is known as the "Crime Victims Restitution Act."

Enacted by Chapter 137, 2001 General Session

77-38a-102. Definitions.

As used in this chapter:

(1) "Conviction" includes a:

(a) judgment of guilt;

(b) a plea of guilty; or

(c) a plea of no contest.

(2) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) "Department" means the Department of Corrections.

(4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

(5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

(6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

(7) "Plea agreement" means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(8) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(9) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(10) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(12) (a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

(13) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(14) (a) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

Amended by Chapter 96, 2005 General Session

77-38a-201. Restitution determination -- Law enforcement duties and responsibilities.

Any law enforcement agency conducting an investigation for criminal conduct which would constitute a felony or class A misdemeanor shall provide in the investigative reports whether a claim for restitution exists, the basis for the claim, and the estimated or actual amount of the claim.

Enacted by Chapter 137, 2001 General Session

77-38a-202. Restitution determination -- Prosecution duties and responsibilities.

(1) At the time of entry of a conviction or entry of any plea disposition of a felony or class A misdemeanor, the attorney general, county attorney, municipal attorney, or district attorney shall provide to the district court:

(a) the names of all victims, including third parties, asserting claims for restitution;

(b) the actual or estimated amount of restitution determined at that time; and

(c) whether or not the defendant has agreed to pay the restitution specified as part of the plea disposition.

(2) In computing actual or estimated restitution, the attorney general, county

attorney, municipal attorney, or district attorney shall:

(a) use the criteria set forth in Section 77-38a-302 for establishing restitution amounts; and

(b) in cases involving multiple victims, incorporate into any conviction or plea disposition all claims for restitution arising out of the investigation for which the defendant is charged.

(3) If charges are not to be prosecuted as part of a plea disposition, restitution claims from victims of those crimes shall also be provided to the court.

(4) (a) The attorney general, county attorney, municipal attorney, or district attorney may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of crime victims into an interest bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending distribution of the funds.

(b) In the event restitution funds are deposited in an interest bearing account as provided under Subsection (4)(a), the attorney general, county attorney, municipal attorney, or district attorney shall:

(i) distribute any interest that accrues in the account to each crime victim on a pro rata basis; and

(ii) if all crime victims have been made whole and funds remain, distribute any remaining funds to the state Division of Finance for deposit to the Utah Office for Victims of Crime.

(c) This section does not prevent an independent judicial authority from collecting, holding, and distributing restitution.

Amended by Chapter 131, 2011 General Session

77-38a-203. Restitution determination -- Department of Corrections -- Presentence investigation.

(1) (a) The department shall prepare a presentence investigation report in accordance with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall provide all available victim information to the department upon request. The victim impact statement shall:

(i) identify all victims of the offense;

(ii) itemize any economic loss suffered by the victim as a result of the offense;

(iii) include for each identifiable victim a specific statement of the recommended amount of complete restitution as defined in Section 77-38a-302, accompanied by a recommendation from the department regarding the payment by the defendant of court-ordered restitution with interest as defined in Section 77-38a-302;

(iv) identify any physical, mental, or emotional injuries suffered by the victim as a result of the offense, and the seriousness and permanence;

(v) describe any change in the victim's personal welfare or familial relationships as a result of the offense;

(vi) identify any request for mental health services initiated by the victim or the victim's family as a result of the offense; and

(vii) contain any other information related to the impact of the offense upon the victim or the victim's family that the court requires.

(b) The crime victim shall be responsible to provide to the department upon

request all invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The crime victim shall also provide upon request:

(i) all documentation and evidence of compensation or reimbursement from insurance companies or agencies of the state of Utah, any other state, or federal government received as a direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and

(ii) proof of identification, including date of birth, Social Security number, drivers license number, next of kin, and home and work address and telephone numbers.

(c) The inability, failure, or refusal of the crime victim to provide all or part of the requested information shall result in the court determining restitution based on the best information available.

(2) (a) The court shall order the defendant as part of the presentence investigation to:

(i) complete a financial declaration form described in Section 77-38a-204; and

(ii) submit to the department any additional information determined necessary to be disclosed for the purpose of ascertaining the restitution.

(b) The willful failure or refusal of the defendant to provide all or part of the requisite information shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information.

(c) If the defendant objects to the imposition, amount, or distribution of the restitution recommended in the presentence investigation, the court shall set a hearing date to resolve the matter.

(d) If any party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

Amended by Chapter 74, 2013 General Session

77-38a-204. Financial declaration by defendant.

(1) (a) The Judicial Council shall design and publish a financial declaration form to be completed by a defendant in a case where the prosecutor has indicated that restitution may be ordered.

(b) The financial declaration form shall:

(i) require a defendant to disclose all assets, income, and financial liabilities of the defendant, including:

(A) real property;

(B) vehicles;

(C) precious metals or gems;

(D) jewelry with a value of $1,000 or more;

(E) other personal property with a value of $1,000 or more;

(F) bank account balances;

(G) cash;

(H) salary, wages, commission, tips, and business income;

(I) pensions and annuities;

(J) intellectual property;

(K) accounts receivable;

(L) accounts payable;
(M) mortgages, loans, and other debts; and
(N) restitution that has been ordered, and not fully paid, in other cases; and
(ii) state that a false statement made in the financial declaration form is punishable as a class B misdemeanor under Section 76-8-504.
(2) A defendant shall, before sentencing, or earlier if ordered by the court, complete the financial declaration described in Subsection (1).

Enacted by Chapter 74, 2013 General Session

77-38a-301. Restitution -- Convicted defendant may be required to pay.
In a criminal action, the court may require a convicted defendant to make restitution.

Enacted by Chapter 137, 2001 General Session

77-38a-302. Restitution criteria.
(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).
(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.
(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.
(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.
(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).
(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.
(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.
(5) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.
(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:
(i) the cost of the damage or loss if the offense resulted in damage to or loss or

destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;

(v) up to five days of the individual victim's determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:

(i) the factors listed in Subsections (5)(a) and (b);

(ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;

(iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(vi) other circumstances that the court determines may make restitution inappropriate.

(d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered restitution, and shall make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole.

(e) The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

Amended by Chapter 74, 2013 General Session

77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.

(1) Upon the court determining that a defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Section 77-38a-302 on the civil judgment docket and provide notice of the order to the parties.

(2) The order shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(3) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover collection and reasonable attorney fees.

(4) Notwithstanding Subsection 77-18-6(1)(b)(v) and Sections 78B-2-311 and 78B-5-202, a judgment ordering restitution when entered on the civil judgment docket shall have the same affect and is subject to the same rules as a judgment in a civil action and expires only upon payment in full, which includes applicable interest, collection fees, and attorney fees. Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment interest. This Subsection (4) applies to all restitution judgments not paid in full on or before May 12, 2009.

(5) The department shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 37, 2011 General Session

77-38a-402. Nondischargeability in bankruptcy.

Restitution imposed under this chapter and interest accruing in accordance with Subsection 77-38a-401(4) is considered a debt and may not be discharged in bankruptcy.

Enacted by Chapter 137, 2001 General Session

77-38a-403. Civil action by victim for damages.

(1) Provisions in this part concerning restitution do not limit or impair the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution under this part may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in the civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action.

Enacted by Chapter 137, 2001 General Session

77-38a-404. Priority.

(1) Restitution payments made pursuant to a court order shall be disbursed to victims within 60 days of receipt from the defendant by the court or department provided:

(a) the victim has complied with Subsection 77-38a-203(1)(b);

(b) if the defendant has tendered a negotiable instrument, funds from the financial institution are actually received; and

(c) the payment to the victim is at least $5, unless the payment is the final payment.

(2) If restitution to more than one person, agency, or entity is required at the same time, the department shall establish the following priorities of payment, except as provided in Subsection (4):

(a) the crime victim;

(b) the Utah Office for Victims of Crime;

(c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct;

(d) the person, entity, or governmental agency that has offered and paid a reward under Section 76-3-201.1 or 78A-6-117;

(e) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct; and

(f) any county correctional facility to which the defendant is required to pay restitution under Subsection 76-3-201(6).

(3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and surcharges are paid.

(4) If the offender is required under Section 53-10-404 to reimburse the department for the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after restitution to the crime victim under Subsection (2)(a).

(5) All money collected for court-ordered obligations from offenders by the department will be applied:

(a) first, to victim restitution, except the current and past due amount of $30 per month required to be collected by the department under Section 64-13-21, if applicable; and

(b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection (4).

(6) Restitution owed to more than one victim shall be disbursed to each victim according to the percentage of each victim's share of the total restitution order.

Amended by Chapter 131, 2011 General Session
Amended by Chapter 208, 2011 General Session

77-38a-501. Default and sanctions.

(1) When a defendant defaults in the payment of a judgment for restitution or any installment ordered, the court, on motion of the prosecutor, parole or probation agent, victim, or on its own motion may impose sanctions against the defendant as provided in Section 76-3-201.1.

(2) The court may not impose a sanction against the defendant under Subsection (1) if:

(a) the defendant's sole default in the payment of a judgement for restitution is the failure to pay restitution ordered under Subsection 76-3-201(6) regarding costs of incarceration in a county correctional facility; and

(b) the sanction would extend the defendant's term of probation or parole.

Amended by Chapter 280, 2003 General Session

77-38a-502. Collection from inmate offenders.

In addition to the remedies provided in Section 77-38a-501, the department upon written request of the prosecutor, victim, or parole or probation agent, shall collect restitution from offender funds held by the department as provided in Section 64-13-23.

Enacted by Chapter 137, 2001 General Session

77-38a-601. Preservation of assets.

(1) Prior to or at the time a criminal information, indictment charging a violation, or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a prosecutor may, if in the prosecutor's best judgment there is a substantial likelihood that a conviction will be obtained and restitution will be ordered in the case, petition the court to:

(a) enter a temporary restraining order, an injunction, or both;

(b) require the execution of a satisfactory performance bond; or

(c) take any other action to preserve the availability of property which may be necessary to satisfy an anticipated restitution order.

(2) (a) Upon receiving a request from a prosecutor under Subsection (1), and after notice to persons appearing to have an interest in the property and affording them an opportunity to be heard, the court may take action as requested by the prosecutor if the court determines:

(i) there is probable cause to believe that a crime has been committed and that the defendant committed it, and that failure to enter the order will likely result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise be made unavailable for restitution; and

(ii) the need to preserve the availability of the property or prevent its sale, distribution, exhibition, destruction, or removal through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(b) In a hearing conducted pursuant to this section, a court may consider reliable hearsay as defined in Utah Rules of Evidence, Rule 1102.

(c) An order for an injunction entered under this section is effective for the period of time given in the order.

(3) (a) Upon receiving a request for a temporary restraining order from a prosecutor under this section, a court may enter a temporary restraining order against an owner with respect to specific property without notice or opportunity for a hearing if:

(i) the prosecutor demonstrates that there is a substantial likelihood that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this chapter; and

(ii) provision of notice would jeopardize the availability of the property to satisfy any restitution order or judgment.

(b) The temporary order in this Subsection (3) expires not more than 10 days after it is entered unless extended for good cause shown or the party against whom it is entered consents to an extension.

(4) A hearing concerning an order entered under this section shall be held as soon as possible, and prior to the expiration of the temporary order.

Amended by Chapter 265, 2009 General Session

77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to under age persons.

(1) As used in this section, "electronic cigarette" is as defined in Section 76-10-101.

(2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer Classifications, may investigate the possible violation of:

(i) Section 32B-4-403 by requesting an individual under the age of 21 years to enter into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

(ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter into and attempt to purchase or make a purchase from a retail establishment of:

(A) a cigar;

(B) a cigarette;

(C) tobacco in any form; or

(D) an electronic cigarette.

(b) A peace officer who is present at the site of a proposed purchase shall direct, supervise, and monitor the individual requested to make the purchase.

(c) Immediately following a purchase or attempted purchase or as soon as practical the supervising peace officer shall inform the cashier and the proprietor or manager of the retail establishment that the attempted purchaser was under the legal age to purchase:

(i) alcohol; or

(ii) (A) a cigar;

(B) a cigarette;

(C) tobacco in any form; or

(D) an electronic cigarette.

(d) If a citation or information is issued, it shall be issued within seven days of the purchase.

(3) (a) If an individual under the age of 18 years old is requested to attempt a purchase, a written consent of that individual's parent or guardian shall be obtained prior to that individual participating in any attempted purchase.

(b) An individual requested by the peace officer to attempt a purchase may:

(i) be a trained volunteer; or

(ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco, or an electronic cigarette.

(4) The individual requested by the peace officer to attempt a purchase and anyone accompanying the individual attempting a purchase may not during the attempted purchase misrepresent the age of the individual by false or misleading identification documentation in attempting the purchase.

(5) An individual requested to attempt to purchase or make a purchase pursuant to this section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic cigarette if a peace officer directs, supervises, and monitors the individual.

(6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section shall be conducted:

(i) on a random basis; and

(ii) within a 12-month period at any one retail establishment location not more often than:

(A) four times for the attempted purchase of:

(I) a cigar;

(II) a cigarette;

(III) tobacco in any form; or

(IV) an electronic cigarette; and

(B) four times for the attempted purchase of alcohol.

(b) Nothing in this section shall prohibit an investigation under this section if:

(i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age established by Section 32B-4-403 or 76-10-104; and

(ii) the supervising peace officer makes a written record of the grounds for the reasonable suspicion.

(7) (a) The peace officer exercising direction, supervision, and monitoring of the attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made.

(b) The report required by this Subsection (7) shall include:

(i) the name of the supervising peace officer;

(ii) the name of the individual attempting the purchase;

(iii) a photograph of the individual attempting the purchase showing how that individual appeared at the time of the attempted purchase;

(iv) the name and description of the cashier or proprietor from whom the individual attempted the purchase;

(v) the name and address of the retail establishment; and

(vi) the date and time of the attempted purchase.

Amended by Chapter 114, 2010 General Session
Amended by Chapter 276, 2010 General Session

77-40-101. Title.

This chapter is known as the "Utah Expungement Act."

Enacted by Chapter 283, 2010 General Session

77-40-102. Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(6) "Department" means the Department of Public Safety established in Section 53-1-103.

(7) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (7).

(8) "Expunge" means to seal or otherwise restrict access to the petitioner's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

(9) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(10) "Petitioner" means a person seeking expungement under this chapter.

(11) "Traffic offense" means all offenses in the following parts and all local ordinances that are substantially similar to the offenses:

(a) Title 41, Chapter 6a, Part 3, Traffic-Control Devices;

(b) Title 41, Chapter 6a, Part 6, Speed Restrictions;

(c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;

(d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;

(e) Title 41, Chapter 6a, Part 9, Right-of-Way;

(f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;

(g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;

(h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and Safety Zones;

(i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;

(j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;

(k) Title 41, Chapter 6a, Part 15, Special Vehicles;

(l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;

(m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and

(n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

Amended by Chapter 199, 2014 General Session

77-40-103. Expungement procedure overview.

The process for the expungement of records under this chapter regarding the arrest, investigation, detention, and conviction of a petitioner is as follows:

(1) The petitioner shall apply to the bureau for a certificate of eligibility for expungement and pay the application fee established by the department.

(2) Once the eligibility process is complete, the bureau shall notify the petitioner.

(3) If the petitioner is qualified to receive a certificate of eligibility for expungement, the petitioner shall pay the issuance fee established by the department.

(4) The petitioner shall file the certificate of eligibility with a petition for expungement in the court in which the proceedings occurred. If there were no court proceedings, or the court no longer exists, the petition may be filed in the district court where the arrest occurred. If a certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk or the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

(5) The petitioner shall deliver a copy of the petition and certificate to the prosecutorial office that handled the court proceedings. If there were no court proceedings, the copy of the petition and certificate shall be delivered to the county attorney's office in the jurisdiction where the arrest occurred.

(6) If an objection to the petition is filed by the prosecutor or victim, a hearing shall be set by the court and the prosecutor and victim notified of the date.

(7) If the court requests a response from Adult Probation and Parole and a response is received, the petitioner may file a written reply to the response within 15 days of receipt of the response.

(8) An expungement may be granted without a hearing if no objection is received.

(9) Upon receipt of an order of expungement, the petitioner shall deliver copies to all government agencies in possession of records relating to the expunged matter.

Amended by Chapter 263, 2014 General Session

77-40-104. Eligibility for expungement of records of arrest, investigation, and detention -- Requirements.

(1) A person who has been arrested or formally charged with an offense may apply to the bureau for a certificate of eligibility to expunge all records of arrest, investigation, and detention which may have been made in the case, subject to the following conditions:

(a) at least 30 days have passed since the arrest for which a certificate of eligibility is sought;

(b) there are no criminal proceedings pending against the petitioner; and

(c) one of the following occurred:

(i) charges were screened by the investigating law enforcement agency and the prosecutor has made a final determination that no charges will be filed in the case;

(ii) the entire case was dismissed with prejudice;

(iii) the person was acquitted at trial on all of the charges contained in the case; or

(iv) the statute of limitations has expired on all of the charges contained in the case.

(2) Notwithstanding Subsection (1)(a), a petitioner seeking expungement under Subsection (1)(c)(iii) shall be issued a certificate of eligibility on an expedited basis.

Amended by Chapter 136, 2012 General Session

77-40-105. Eligibility for expungement of conviction -- Requirements.

(1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) felony automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2); or

(vi) a registerable sex offense as defined in Subsection 77-41-102(16);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession

offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, excluding infractions and any traffic offenses, each of which is contained in a separate criminal episode.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (4) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(7) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Amended by Chapter 199, 2014 General Session

77-40-106. Application for certificate of eligibility -- Fees.

(1) (a) A petitioner seeking to obtain an expungement for a criminal record shall apply for a certificate of eligibility from the bureau.

(b) A petitioner who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.

(c) Regardless of whether the petitioner is prosecuted, the bureau may deny a certificate of eligibility to anyone providing false information on an application.

(2) (a) The bureau shall perform a check of records of governmental agencies, including national criminal data bases, to determine whether a petitioner is eligible to receive a certificate of eligibility under this chapter.

(b) For purposes of determining eligibility under this chapter, the bureau may review records of arrest, investigation, detention and conviction that have been previously expunged, regardless of the jurisdiction in which the expungement occurred.

(c) If the petitioner meets all of the criteria under Section 77-40-104 or 77-40-105, the bureau shall issue a certificate of eligibility to the petitioner which shall be valid for a period of 90 days from the date the certificate is issued.

(d) If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court.

(3) (a) The bureau shall charge application and issuance fees for a certificate of eligibility or special certificate in accordance with the process in Section 63J-1-504.

(b) The application fee shall be paid at the time the petitioner submits an application for a certificate of eligibility to the bureau.

(c) If the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of eligibility or special certificate unless Subsection (3)(d) applies.

(d) An issuance fee may not be assessed against a petitioner who qualifies for a certificate of eligibility under Section 77-40-104 unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(e) Funds generated under this Subsection (3) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(4) The bureau shall provide clear written directions to the petitioner along with a list of agencies known to be affected by an order of expungement.

Amended by Chapter 41, 2013 General Session

77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing -- Standard of proof -- Exception.

(1) The petitioner shall file a petition for expungement and the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

(2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b) The notice shall include a copy of the petition, certificate of eligibility, statutes and rules applicable to the petition, state that the victim has a right to object to the expungement, and provide instructions for registering an objection with the court.

(3) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 30 days after receipt of the petition.

(4) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by Adult Probation and Parole shall include:

(i) the reasons probation was terminated; and

(ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(c) A copy of the response shall be provided to the petitioner and the prosecuting attorney.

(5) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by Adult Probation and Parole within 15 days after receipt.

(6) (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.

(b) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

(c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(7) If no objection is received within 60 days from the date the petition for expungement was filed with the court, the expungement may be granted without a hearing.

(8) The court shall issue an order of expungement if it finds by clear and convincing evidence that:

(a) the petition and certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

(c) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105(5), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction; and

(d) it is not contrary to the interests of the public to grant the expungement.

(9) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Amended by Chapter 263, 2014 General Session

77-40-108. Distribution of order -- Redaction -- Receipt of order -- Administrative proceedings -- Bureau requirements.

(1) (a) A person who receives an order of expungement under this chapter or Section 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.

(b) A person who receives an order of expungement under Section 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process in Section 63J-1-504, before the bureau's record may be expunged.

(2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to respond differently, a person who has received an expungement of an arrest or conviction under this chapter or Section 77-27-5.1, may respond to any inquiry as though the arrest or conviction did not occur.

(3) The bureau shall forward a copy of the expungement order to the Federal Bureau of Investigation.

(4) An agency receiving an expungement order shall expunge the petitioner's identifying information contained in records in its possession relating to the incident for which expungement is ordered.

(5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2), a government agency or official may not divulge information or records which have been expunged regarding the petitioner contained in a record of arrest, investigation, detention, or conviction after receiving an expungement order.

(6) (a) An order of expungement may not restrict an agency's use or dissemination of records in its ordinary course of business until the agency has received a copy of the order.

(b) Any action taken by an agency after issuance of the order but prior to the agency's receipt of a copy of the order may not be invalidated by the order.

(7) An order of expungement may not:

(a) terminate or invalidate any pending administrative proceedings or actions of which the petitioner had notice according to the records of the administrative body prior to issuance of the expungement order;

(b) affect the enforcement of any order or findings issued by an administrative body pursuant to its lawful authority prior to issuance of the expungement order; or

(c) remove any evidence relating to the petitioner including records of arrest, which the administrative body has used or may use in these proceedings.

Amended by Chapter 20, 2013 General Session
Amended by Chapter 41, 2013 General Session

77-40-109. Retention and release of expunged records -- Agencies.

(1) The bureau shall keep, index, and maintain all expunged records of arrests and convictions.

(2) (a) Employees of the bureau may not divulge any information contained in its index to any person or agency without a court order unless specifically authorized by statute.

(b) The following organizations may receive information contained in expunged records upon specific request:

(i) the Board of Pardons and Parole;

(ii) Peace Officer Standards and Training;

(iii) federal authorities, unless prohibited by federal law;

(iv) the Department of Commerce;

(v) the Department of Insurance;

(vi) the State Office of Education; and

(vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office.

(c) A person or agency authorized by this Subsection (2) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court order or specific request, including distribution on a public website.

(3) The bureau may also use the information in its index as provided in Section 53-5-704.

(4) If, after obtaining an expungement, the petitioner is charged with a felony, the state may petition the court to open the expunged records upon a showing of good cause.

(5) (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.

(b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

(c) At the end of the action or proceeding, the court shall order the records expunged again.

(d) Any person authorized by this Subsection (5) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.

(6) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records.

Amended by Chapter 199, 2014 General Session

77-40-110. Use of expunged records -- Individuals -- Use in civil actions.

Records expunged under this chapter or Section 77-27-5.1 may be released to or viewed by the following individuals:

(1) the petitioner;

(2) a law enforcement officer who was involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and

(3) parties to a civil action arising out of the expunged incident, providing the information is kept confidential and utilized only in the action.

Amended by Chapter 41, 2013 General Session

77-40-111. Rulemaking.

The department may make rules to:

(1) implement procedures for applying for certificates of eligibility;

(2) specify procedures for receiving a certificate of eligibility; and

(3) create forms and determine information necessary to be provided to the bureau.

Enacted by Chapter 283, 2010 General Session

77-40-112. Penalty.

Any person who willfully violates any prohibition in this chapter is guilty of a class A misdemeanor unless the prohibition specifically indicates a different penalty.

Renumbered and Amended by Chapter 283, 2010 General Session

77-40-113. Retroactive application.

The provisions of this chapter apply retroactively to all arrests and convictions regardless of the date on which the arrests were made or convictions were entered.

Renumbered and Amended by Chapter 283, 2010 General Session

77-41-101. Title.

This chapter is known as the "Sex and Kidnap Offender Registry."

Enacted by Chapter 145, 2012 General Session

77-41-102. Definitions.

As used in this chapter:

(1) "Bureau" means the bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.

(2) "Business day" means a day on which state offices are open for regular business.

(3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.

(4) "Department" means the Department of Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.

(9) "Kidnap offender" means any person other than a natural parent of the victim who:

(a) has been convicted in this state of a violation of:

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

(v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iv);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(c) (i) is required to register as an offender in any other jurisdiction, or who is required to register as an offender by any state, federal, or military court; and

(ii) in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in another jurisdiction, or as a result of the conviction, is required to register in the person's state of residence;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the person's 21st birthday.

(10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (16).

(12) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(b) does not include date of birth, Social Security number, PIN number, or Internet passwords.

(13) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(14) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(15) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12 month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

(16) "Sex offender" means any person:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

(ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011;

(iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

(iv) Section 76-5-401.1, sexual abuse of a minor;

(v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(vi) Section 76-5-402, rape;

(vii) Section 76-5-402.1, rape of a child;

(viii) Section 76-5-402.2, object rape;

(ix) Section 76-5-402.3, object rape of a child;

(x) a felony violation of Section 76-5-403, forcible sodomy;

(xi) Section 76-5-403.1, sodomy on a child;

(xii) Section 76-5-404, forcible sexual abuse;

(xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

(xiv) Section 76-5-405, aggravated sexual assault;

(xv) Section 76-5-412, custodial sexual relations, when the person in custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;

(xvi) Section 76-5b-201, sexual exploitation of a minor;

(xvii) Section 76-7-102, incest;

(xviii) Section 76-9-702, lewdness, if the person has been convicted of the offense four or more times;

(xix) Section 76-9-702.1, sexual battery, if the person has been convicted of the offense four or more times;

(xx) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;

(xxi) Section 76-9-702.5, lewdness involving a child;

(xxii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

(xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or

(xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (16)(a);

(b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (16)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(c) (i) who is required to register as an offender in any other jurisdiction, or who is required to register as an offender by any state, federal, or military court; and

(ii) who, in any 12 month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) who is a nonresident regularly employed or working in this state or who is a student in this state and was convicted of one or more offenses listed in Subsection (16)(a), or any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required to register in the person's jurisdiction of residence;

(e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (16)(a); or

(f) who is adjudicated delinquent based on one or more offenses listed in Subsection (16)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the person's 21st birthday.

(17) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(18) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Enacted by Chapter 145, 2012 General Session
Amended by Chapter 247, 2012 General Session, (Coordination Clause)

77-41-103. Department duties.

(1) The department, to assist in investigating kidnapping and sex-related crimes, and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders and sex and kidnap offenses;

(b) make information listed in Subsection 77-41-110(4) available to the public; and

(c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-41-110(4), but only:

(i) for the purposes under this chapter; or

(ii) in accordance with Section 63G-2-206.

(2) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection 77-41-102(9) or (16), within three business days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-41-102(9) or (16), within five business days.

(3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102(9) or (16), the convicting court shall within three business days forward a copy of the judgment and sentence to the department.

(4) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for;

(ii) a description of the offender's primary and secondary targets; and

(iii) any other relevant identifying information as determined by the department;

(b) maintain the Sex Offender and Kidnap Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:

(i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or

(B) promptly made available to the district superintendent of the school district where the offender is enrolled if the educational institution is an institution of primary

education; and

(ii) entered into the appropriate state records or data system.

Amended by Chapter 278, 2013 General Session

77-41-104. Registration of offenders -- Department and agency requirements.

(1) An offender in the custody of the department shall be registered by agents of the department upon:

(a) placement on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(2) An offender who is not in the custody of the department and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined, upon:

(a) commitment to the correctional facility; and

(b) release from confinement.

(3) An offender in the custody of the division shall be registered with the department by the division prior to release from custody.

(4) An offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(5) (a) (i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole within the department.

(ii) In order to conduct offender registration under this chapter, the agency shall ensure the agency staff responsible for registration:

(A) has received initial training by the department and has been certified by the department as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and

(B) certify annually with the department.

(b) (i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days electronically notify the law enforcement agencies that have jurisdiction over the area where:

(A) the residence that the offender is leaving is located; and

(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (5)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

(c) The department shall make available to offenders required to register under

this chapter the name of the agency, whether it is a local law enforcement agency or the department, that the offender should contact to register, the location for registering, and the requirements of registration.

(6) An agency in the state that registers an offender on probation, an offender who has been released from confinement to parole status or termination, or an offender whose sentence has expired shall inform the offender of the duty to comply with:

(a) the continuing registration requirements of this chapter during the period of registration required in Subsection 77-41-105(3), including:

(i) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines;

(ii) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

(iii) notification to the out-of-state agency where the offender is living, whether or not the offender is a resident of that state; and

(b) the driver license certificate or identification card surrender requirement under Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or 53-3-804.

(7) The department may make administrative rules necessary to implement this chapter, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

(8) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections 77-41-103(4) and 77-41-105(8).

(9) This chapter does not create or impose any duty on any person to request or obtain information regarding any offender from the department.

Enacted by Chapter 145, 2012 General Session

77-41-105. Registration of offenders -- Offender responsibilities.

(1) An offender convicted by any other jurisdiction is required to register under Subsection (3) and Subsection 77-41-102(9) or (16). The offender shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(2) (a) An offender required to register under Subsection 77-41-102(9) or (16) who is under supervision by the department shall register with Division of Adult Probation and Parole.

(b) An offender required to register under Subsection 77-41-102(9) or (16) who is no longer under supervision by the department shall register with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3) (a) Except as provided in Subsections (3)(b), (c), and (4), and Section 77-41-106, an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the

offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(b) Except as provided in Subsections (4) and (5), and Section 77-41-106, an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or (16)(a), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted if that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (3)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (3)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (3)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of any of the offenses listed in Section 77-41-106 shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(ii) This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) In the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the Sex Offender and Kidnap Offender Registration website.

(6) An offender who is required to register under Subsection (3) shall surrender the offender's license, certificate, or identification card as required under Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as provided under Section 53-3-205 or 53-3-804.

(7) A sex offender who violates Section 77-27-21.8 regarding being in the presence of a child while required to register under this chapter shall register for an additional five years subsequent to the registration period otherwise required under this chapter.

(8) An offender shall provide the department or the registering entity with the following information:

(a) all names and aliases by which the offender is or has been known;

(b) the addresses of the offender's primary and secondary residences;

(c) a physical description, including the offender's date of birth, height, weight, eye and hair color;

(d) the make, model, color, year, plate number, and vehicle identification number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a set of fingerprints, if one has not already been provided;

(g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;

(h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;

(i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;

(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;

(k) a copy of the offender's passport, if a passport has been issued to the offender;

(l) if the offender is an alien, all documents establishing the offender's immigration status;

(m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;

(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the offender at any educational institution;

(o) the name and the address of any place where the offender is employed or will be employed;

(p) the name and the address of any place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's Social Security number.

(9) Notwithstanding Section 42-1-1, an offender:

(a) may not change the offender's name:

(i) while under the jurisdiction of the department; and

(ii) until the registration requirements of this statute have expired; and

(b) may not change the offender's name at any time, if registration is for life under Subsection 77-41-105(3)(c).

(10) Notwithstanding Subsections (8)(i) and (j) and 77-41-103(1)(c), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including any bank,

retirement, or investment accounts.

Amended by Chapter 105, 2014 General Session

77-41-106. Registerable offenses.

Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

(1) any offense listed in Subsection 77-41-102(9) or (16) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (16) or has previously been required to register as a sex offender for an offense committed as a juvenile;

(2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:

(a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403.1, sodomy on a child;

(g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

(h) Section 76-5-405, aggravated sexual assault;

(3) Section 76-4-401, a felony violation of enticing a minor over the Internet;

(4) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;

(5) Section 76-5-403, forcible sodomy;

(6) Section 76-5-404.1, sexual abuse of a child;

(7) Section 76-5b-201, sexual exploitation of a minor; or

(8) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

Enacted by Chapter 145, 2012 General Session

77-41-107. Penalties.

(1) An offender who knowingly fails to register under this chapter or provides false or incomplete information is guilty of:

(a) a third degree felony and shall be sentenced to serve a term of incarceration for not less than 90 days and also at least one year of probation if:

(i) the offender is required to register for a felony conviction or adjudicated delinquent for what would be a felony if the juvenile were an adult of an offense listed in Subsection 77-41-102(9)(a) or (16)(a); or

(ii) the offender is required to register for the offender's lifetime under Subsection 77-41-105(3)(c); or

(b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation if the offender is required to register for a misdemeanor conviction or is adjudicated delinquent for what would be a misdemeanor if the juvenile were an adult of an offense

listed in Subsection 77-41-102(9)(a) or (16)(a).

(2) Neither the court nor the Board of Pardons and Parole may release a person who violates this chapter from serving the term required under Subsection (1). This Subsection (2) supersedes any other provision of the law contrary to this chapter.

(3) The offender shall register for an additional year for every year in which the offender does not comply with the registration requirements of this chapter.

Enacted by Chapter 145, 2012 General Session

77-41-108. Classification of information.

Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, information under Subsection 77-41-103(4) that is collected and released under Subsection 77-41-110(4) is public information, unless otherwise restricted under Subsection 77-41-103(1).

Enacted by Chapter 145, 2012 General Session

77-41-109. Miscellaneous provisions.

(1) (a) If an offender is to be temporarily sent on any assignment outside a secure facility in which the offender is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (1) does not apply to any person temporarily released under guard from the institution in which the person is confined.

(2) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted of any offense listed in Subsection 77-41-102(9) or (16) is not relieved from the responsibility to register as required under this section, unless the offender is removed from the registry under Section 77-41-112.

Enacted by Chapter 145, 2012 General Session
Amended by Chapter 247, 2012 General Session, (Coordination Clause)

77-41-110. Sex offender and kidnap offender registry -- Department to maintain.

(1) The department shall maintain a Sex Offender and Kidnap Offender Notification and Registration website on the Internet, which shall contain a disclaimer informing the public:

(a) the information contained on the site is obtained from offenders and the department does not guarantee its accuracy or completeness;

(b) members of the public are not allowed to use the information to harass or threaten offenders or members of their families; and

(c) harassment, stalking, or threats against offenders or their families are prohibited and doing so may violate Utah criminal laws.

(2) The Sex Offender and Kidnap Offender Notification and Registration website shall be indexed by both the surname of the offender and by postal codes.

(3) The department shall construct the Sex Offender Notification and Registration website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(4) Except as provided in Subsection (5), the Sex Offender and Kidnap Offender Notification and Registration website shall include the following registry information:

(a) all names and aliases by which the offender is or has been known, but not including any online or Internet identifiers;

(b) the addresses of the offender's primary, secondary, and temporary residences;

(c) a physical description, including the offender's date of birth, height, weight, and eye and hair color;

(d) the make, model, color, year, and plate number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a list of all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business;

(g) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student;

(h) a list of places where the offender works as a volunteer; and

(i) the crimes listed in Subsections 77-41-102(9) and (16) that the offender has been convicted of or for which the offender has been adjudicated delinquent in juvenile court.

(5) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this chapter and will be presumed to have acted in good faith by reporting information.

(6) The department shall redact information that, if disclosed, could reasonably identify a victim.

Enacted by Chapter 145, 2012 General Session
Amended by Chapter 382, 2012 General Session, (Coordination Clause)

77-41-111. Fees.

(1) Each offender required to register under Section 77-41-105 shall, in the month of the offender's birth:

(a) pay to the department an annual fee of $100 each year the offender is subject to the registration requirements of this chapter; and

(b) pay to the registering agency, if it is an agency other than the Department of Corrections, an annual fee of not more than $25, which may be assessed by that agency for providing registration.

(2) Notwithstanding Subsection (1), an offender who is confined in a secure facility or in a state mental hospital is not required to pay the annual fee.

(3) The department shall deposit fees collected in accordance with this chapter in the General Fund as a dedicated credit, to be used by the department for maintaining the offender registry under this chapter and monitoring offender registration compliance, including the costs of:

(a) data entry;
(b) processing registration packets;
(c) updating registry information;
(d) ensuring offender compliance with registration requirements under this chapter; and
(e) apprehending offenders who are in violation of the offender registration requirements under this chapter.

Enacted by Chapter 145, 2012 General Session

77-41-112. Removal from registry -- Requirements -- Procedure.

(1) An offender may petition the court where the offender was convicted of the offense requiring registration for an order removing the offender from the Sex Offender and Kidnap Offender Registry if:
(a) the offender was convicted of violating:
(i) Section 76-5-301, Kidnapping, and the conviction of violating Section 76-5-301 is the only conviction for which the offender is required to register;
(ii) Section 76-5-304, Unlawful Detention, and the conviction of violating Section 76-5-304 is the only conviction for which the offender is required to register;
(iii) Section 76-5-401, Unlawful sexual activity with a minor and, at the time of the offense, was not more than 10 years older than the victim; or
(iv) Section 76-5-401.2, Unlawful sexual conduct with a 16 or 17 year old, and at the time of the offense, was not more than 15 years older than the victim;
(b) five years have passed since the completion of the offender's sentence;
(c) the offender has successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the conviction;
(d) (i) the offender has not been convicted of any other crime, excluding traffic offenses, as evidenced by a certificate of eligibility issued by the bureau;
(ii) as used in this Section, "traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
(e) the offender has paid all restitution ordered by the court;
(f) the offender has complied with all the registration requirements at all times as required in this chapter, as evidenced by a document obtained by the offender from the Utah Department of Corrections, which confirms compliance; and
(g) the office that prosecuted the offender, and the victim, or if the victim is still a minor, the victim's parent, are notified and provided with an opportunity to respond in accordance with Subsection (3)(a).
(2) (a) (i) An offender seeking removal from the Sex Offender or Kidnap Offender Registry shall apply for a certificate of eligibility from the bureau.
(ii) An offender who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.
(iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate of eligibility to anyone providing false information on an application.
(b) (i) The bureau shall perform a check of records of governmental agencies, including national criminal databases, to determine whether an offender is eligible to

receive a certificate of eligibility under this section.

(ii) If the offender meets all of the criteria under Subsections (1)(b) and (d), the bureau shall issue a certificate of eligibility to the offender, which shall be valid for a period of 90 days from the date the certificate is issued.

(c) (i) The bureau shall charge application and issuance fees for a certificate of eligibility in accordance with the process in Section 63J-1-504.

(ii) The application fee shall be paid at the time the offender submits an application for a certificate of eligibility to the bureau.

(iii) If the bureau determines that the issuance of a certificate of eligibility is appropriate, the offender will be charged an additional fee for the issuance of a certificate of eligibility.

(d) Funds generated under this Subsection (2) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(3) (a) The offender shall file the petition, original information, and court docket with the court, and deliver a copy of the petition to the office of the prosecutor.

(i) Upon receipt of a petition for removal from the Sex Offender and Kidnap Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to the victim at the most recent address of record on file or, if the victim is still a minor, to the parent or guardian of the victim.

(ii) The notice shall include a copy of the petition, state that the victim has a right to object to the removal of the offender from the registry, and provide instructions for registering an objection with the court.

(b) The office of the prosecutor shall provide the following, if available, to the court within 30 days after receiving the petition:

(i) presentencing report;

(ii) any evaluation done as part of sentencing; and

(iii) any other information the office of the prosecutor feels the court should consider.

(c) The victim, or the victim's parent or guardian if the victim is a minor, may respond to the petition by filing a recommendation or objection with the court within 45 days after the mailing of the petition to the victim.

(4) (a) The court shall:

(i) review the petition and all documents submitted with the petition; and

(ii) hold a hearing if requested by the prosecutor or the victim.

(b) The court shall consider whether the offender has paid all restitution ordered by the court or the Board of Pardons.

(c) If the court determines that it is not contrary to the interests of the public to do so, it may grant the petition and order removal of the offender from the registry.

(d) If the court grants the petition, it shall forward a copy of the order directing removal of the offender from the registry to the department and the office of the prosecutor.

(5) The office of the prosecutor shall notify the victim of the court's decision in the same manner as notification was provided in Subsection (3)(a).

Amended by Chapter 122, 2013 General Session